Institute of International Bankers

Global Survey 2021

Regulatory and Market Developments
Covering 13 Countries Across 4 Continents

October 2021
Overview

The Institute of International Bankers (IIB) represents internationally headquartered financial institutions from over 35 countries in connection with U.S. legislative, regulatory, compliance, and tax issues that affect their banking, securities, and other financial activities in the United States. In the aggregate, IIB members’ U.S. operations hold approximately $5 trillion in banking and non-banking assets, fund 25% of all commercial and industrial bank loans made in the United States, and contribute to the depth and liquidity of U.S. financial markets. IIB members contribute to the employment of hundreds of thousands of employees in the United States, both in the financial sector and related service sectors. As providers of credit and other financial services in the United States, the U.S. operations of foreign banks add diversity and competitiveness to the U.S. financial services markets, help U.S. businesses grow, and promote U.S. and international financial stability.

This 34th annual Global Survey of Regulatory and Market Developments in Banking, Securities, and Insurance is part of the IIB’s ongoing efforts to contribute to the understanding of global trends in financial regulation and markets. This year’s Global Survey covers developments during the period from July 2020 to September 2021 in 13 countries. We are very grateful to the banking associations and financial services supervisory authorities that have contributed to this year’s Survey. Without their participation this publication would not be possible.

For further information contact:

Institute of International Bankers
299 Park Avenue
New York, New York 10171
info@iib.org
# Table of Contents

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUSTRALIA</td>
<td>5</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>AUSTRALIAN BANKERS’ ASSOCIATION</td>
<td></td>
</tr>
<tr>
<td>CANADA</td>
<td>17</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>CANADIAN BANKERS’ ASSOCIATION</td>
<td></td>
</tr>
<tr>
<td>CHINA</td>
<td>28</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>BANK OF CHINA</td>
<td></td>
</tr>
<tr>
<td>GERMANY</td>
<td>31</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>BUNDESVERBAND DEUTSCHER BANKEN</td>
<td></td>
</tr>
<tr>
<td>HONG KONG</td>
<td>38</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>HONG KONG ASSOCIATION OF BANKS</td>
<td></td>
</tr>
<tr>
<td>MALAYSIA</td>
<td>55</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>THE ASSOCIATION OF BANKS IN MALAYSIA</td>
<td></td>
</tr>
<tr>
<td>PORTUGAL</td>
<td>62</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>ASSOCIAÇÃO PORTUGUESA DE BANCOS</td>
<td></td>
</tr>
<tr>
<td>ROMANIA</td>
<td>66</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>NATIONAL BANK OF ROMANIA</td>
<td></td>
</tr>
<tr>
<td>SINGAPORE</td>
<td>74</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>ASSOCIATION OF BANKS IN SINGAPORE</td>
<td></td>
</tr>
<tr>
<td>SPAIN</td>
<td>87</td>
</tr>
<tr>
<td>Prepared by</td>
<td></td>
</tr>
<tr>
<td>ASOCIACIÓN ESPAÑOLA DE BANCA</td>
<td></td>
</tr>
</tbody>
</table>
Australia

Overview

While Australia is experiencing significant societal impacts from COVID-19, Australia's economic recovery has been stronger than expected and the Reserve Bank of Australia (RBA) forecasts this will continue.

The Australian Government and RBA responded rapidly to the economic impact of the COVID-19 virus by swiftly announcing fiscal and monetary policy measures designed to support consumers, businesses, and financial markets. Experiences to date show when new COVID-19 outbreaks occur, these are being contained and the economy has been seen to bounce back quickly. It remains to be seen what impacts will occur from the sustained lock down in NSW.

The Australian financial system remains well positioned to withstand the continued COVID-19 shock with banks maintaining significant capital (D-SIBs in top quartile on an international comparable basis) and liquidity buffers which are allowing them to absorb the continued impacts of the pandemic.

Economy

Economic recovery in Australia is stronger than initially expected and the RBA forecasts this to continue.

Labour market recovery is also occurring faster than predicted with the unemployment rate falling 4.9% as at June 2021 which is the lowest seen over the last 10 years. While this exceptionally strong momentum is a positive sign for the Australian economic recovery, the Federal Government remains cautious due to ongoing uncertainty from the impact of possible future COVID-19 lockdowns and the impact on labour market conditions. With the closure of Australia's international boarders, job vacancies remain high, and an increasing number of industries and businesses are reporting labour shortages. Despite these shortages, wage outcomes and inflation remain subdued, and improvements are predicted to be modest and gradual in nature. Inflation in underlying terms is expected to be 1.5-2% annually until mid-2023.

Interest rates are expected to stay low with the RBA maintaining the target of 10 basis points for the April 2024 bond. The existing bond purchase program is playing an important role and while the weekly amount purchased will be monitored, this will continue to support low funding costs in Australia.
With strong demand for owner-occupied properties (including first home buyers) as well as increased borrowing by investors, the housing market continues to be strong with price rises evident in all major markets.

**Monetary policy support during COVID-19**

In March 2020, the RBA announced a suite of monetary policy measures to support the Australian economy through the COVID-19 pandemic and continues to have a comprehensive set of measures to support the flow of credit into the economy.

**Term Funding Facility (TFF)**

The Reserve Bank of Australia (RBA) established the Term Funding Facility as a policy response to the effects of the COVID-19 pandemic. This facility offered offer low-cost three-year funding to authorised deposit-taking institutions (ADIs). The purpose of the facility was to reduce funding costs for ADIs and in turn help to reduce interest rates for borrowers and to encourage ADIs to support businesses during the pandemic.

As at the 30 June 2021, the TFF closed to new drawdowns with the last possible maturity date for Term Funding Facility funds set at 30 June 2024. At its close, drawdowns from the TFF amounted to $188 billion which has contributed to the Australian banking system being highly liquid.

**Yield Curve Control**

As part of its measures to support the Australian economy and maintain low interest rates, the RBA originally announced a target of 0.25 per cent on three-year Australian Government bonds which has subsequently been reduced to 0.10 per cent as a further measure to support the economy. In Australia, a significant amount of borrowing is at variable rates thereby targeting the 3-year yield has supported lower borrowing rates for households and businesses. The market has showed significant confidence in the sustainability of this target with the three-year yield being anchored close to these percentages.

**Government’s support of credit to the economy**

Since March 2020, the Australian Government announced substantial packages designed at supporting the Australian economy. The response was focused on individuals, households, businesses and employers, and the flow of credit.

**SME Loan Guarantee Scheme**

To provide support to small and medium enterprises (SMEs) during the pandemic, the Australian Government announced the Coronavirus SME Loan Guarantee Scheme. Nearly $4
billion was lent under the SME loan guarantee phases 1 & 2, with lending under the 3rd phase (SME recovery loan scheme) now underway. Under this scheme, the government guarantees 80% of the loan amount and borrowers can access a repayment holiday of up to 24 months. The third phase remains open for borrowers until 31 December 2021.

Structured Finance Support Fund

The Government also established the Structured Finance Support Fund to support lending to SMEs. The Fund administered by the Australian Office of Financial Management invests in structured finance markets used by small lenders, including non-bank lenders. The support is provided through direct investments in term and warehouse securitisations used by these lenders.

Banking industry support during COVID-19

Mortgage and Business Loan deferrals

To relieve some of the financial pressure felt by households, Australian banks, via the ABA announced support through a deferral package both for home loans and business loans for up to six months. It was later announced that this could further be extended by four months in certain circumstances. The interest accumulated over the period of the loan deferral will be capitalised over the life of the loan, with bank customers given the choice of extending the term of their loan or increasing their monthly payments upon the conclusion of the deferral period.

At its peak in June 2020, banks had deferred nearly one million loans worth $276 billion or roughly 10% of all loans in Australia. The day before the scheme ended, less than 0.5% of all loans that had been deferred remained deferred, accounting for only 0.03% of all loan facilities.

In early July 2021 banks offered a second round of relief for customers impacted by COVID-19. This included a small business loan deferral of up to three months (defined as businesses with turnover of less than $5 million and loans worth less than $3 million). Businesses could also receive a refund of merchant fees for up to three months and a waiver of fees and penalties on Cash Deposit and Farm Management Deposit accounts.

Banks continue to provide tailored support through a range of measures, including loan restructuring and other financial hardship assistance. Furthermore, the ABA has led the development of a new tool to help customers still experiencing hardship to explain exactly how the banks will assist them if they are still in difficulty.

Personal loans, credit cards and bank fees
The deferral of loan repayment relief was further expanded to encompass personal loans and credit cards by individual banks. In addition to this, the banking industry has provided support to customers by waiving credit card fees and restructuring loans to the benefit of impacted customers.

**Customers Experiencing Vulnerability**

Financial abuse guidelines

In April 2021 the ABA released two updated industry guidelines on financial abuse:

- Preventing and responding to financial abuse (including elder financial abuse)
- Preventing and responding to Family and Domestic Violence (FDV)

The industry guidelines outline best practice to ensure bank staff are equipped to recognise signs of and respond to financial abuse. The guidelines were updated to reflect improvements in industry best practice, more consistency between the two guidelines, a plain English style, provisions of the new Banking Code of Practice, stakeholder recommendations, and emerging issues (such as abuse in transaction descriptions and the impact of external events such as fires, floods, and pandemics).

**Debt Management Firms**

In December 2020 the ABA finalised industry guiding principles on what banks will do when they believe a customer experiencing financial difficulty appoints a representative that is not acting in the customers best interests. The principles preserve a customer's right to appoint a representative to deal with the bank on their behalf, while trying to protect customers where the representative is not acting in their interests.

**Lenders Mortgage Insurance**

In December 2020 the ABA finalised industry guiding principles on Lenders Mortgage Insurance (LMI). The principles outline what banks will do to help customers understand what LMI is, including clarifying that:

- If a property is sold for less than the amount owed, the customer is liable for the remaining debt.
- LMI protects the bank, not the customer.
- Information a bank will provide when a customer defaults on their loan.
- Information the bank will give the customer and insurer when an LMI claim is made.
- Consumer protections in place when the remaining debt is recovered.


Insolvency Measures

Due to the significant interruption to the economy caused by the COVID-19 pandemic, the government adopted some temporary insolvency measures to provide businesses and homeowners the best chance to succeed.

- The minimum threshold for creditors issuing a statutory demand on a company under the Corporations Act 2001 was temporarily increased from $2,000 to $20,000. This aims to minimise the impact of losing homes or businesses if a small debt is owed. After this measure expired, a permanent change in the threshold was made to $4000.
- Additional temporary measures have been made to the personal insolvency system regulated by the Bankruptcy Act 1966. The threshold for the minimum amount of debt required for a creditor to initiate bankruptcy proceedings against a debtor was temporarily increased from $5,000 to $20,000. Since those changes expired, a permanent change to this threshold has been made to $10,000.
- Temporary changes were made increasing the time a debtor has to respond to a bankruptcy notice from 21 days to six months.
- Temporary measures were put in place to relieve company directors from personal liability for insolvent trading. These ceased on 31 December 2020.

The Australian Government has also made changes to the insolvency framework to help more small businesses restructure and survive the economic impact of COVID-19. The intention is that, where restructuring is not possible, businesses will be able to wind up faster, enabling greater returns for creditors and employees. Two new processes were made available for small businesses from 1 January 2021:

- Simplified liquidation framework
- Small business (SB) restructuring plan.

Royal Commission

In December 2017, the Australian Government established a Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The final report was released on 4 February 2019 and made 76 recommendations of which 31 were relevant for banks, 8 of which were directed at the industry to implement with the remaining number to be implemented by regulators and Government which have experienced some delay due to COVID-19.

Australia has seen notable change across the industry since the final report was delivered with banks culture changing, bonuses have been overhauled so the customer comes first. Additional changes are expected over the coming year with greater accountability within banks with the introduction of the Financial Accountability Regime.
Banking Code of Practice

The ABA's Banking Code of Practice (the Code) sets out the banking industry's key commitments and obligations to customers on standards of practice, disclosure, and principles of conduct for their banking services. The Code applies to personal and small business bank customers.

The ABA has commenced the triennial independent review of Banking Code of Practice, in line with legal and regulatory requirements. The review will provide an opportunity for all relevant stakeholders to make submissions on important matters associated with the Code. The ABA aims to complete its responses to any recommendations in early 2022 before referring to ASIC to approve any resulting changes.

Remuneration

Prudential regulator, APRA is creating a new prudential standard relating to remuneration requirements across all APRA-regulated industries. The objective of the standard is to align remuneration structures so that they support the management of both financial and non-financial risks through a focus on long-term value creation.

While the initial consultation experienced delays due to the COVID-19 pandemic, consultation of the draft guidance closed in July 2021. APRA plans to finalise this standard in the second half of 2021 with entities required to comply in January 2023.

Conduct and Culture

APRA's Governance, Culture, Remuneration and Accountability policy work has been extended since the finalisation of the Royal Commission Report. APRA has undertaken governance and culture reviews of select regulated entities, which has included a self-assessment followed by 'deep dive' investigations into the entity's governance processes. APRA is currently preparing a pilot survey to assess the health of risk culture in select entities. Subject to the outcomes of the pilot, it may seek to extend the survey to all regulated entities.

ASIC undertook a program in 2019 which involved an organisational psychologist attending the board meetings of regulated entities as an observer. The purpose was to understand the dynamic of board culture.

Much of the progress of this work has been slowed due to the need to respond to the COVID-19 pandemic.

Open Banking

In May 2017, the Australian Government announced the introduction of an Open Banking regime in Australia. The implementation of Open Banking is occurring in several stages due to
the complexity and scope of the functionality and unlike other jurisdictions, the Australian implementation imposes an obligation on all approved deposit taking institutions to comply across most banking products and all customers.

Open banking gives customers the ability to share their banking data with third parties that have been accredited by the Australian Competition & Consumer Commission (ACCC) and by November 2022 all banks are required to comply to ensure full data transfer is available for consumers and businesses.

Open Banking is the first delivery of the Consumer Data Right. The next sector to launch will be energy. Treasury is undertaking an assessment for the potential for telecommunications sector as the third sector to open data sharing.

**Comprehensive Credit Reporting (CCR)**

On 3 February 2021, the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 (CCR legislation) passed Parliament. This Act established a mandatory comprehensive credit reporting regime to apply from 1 July 2021 for the largest four banks.

Prior to CCR, a credit report was only required to have credit inquiries, defaults, and serious infringements. The additional information shared under the mandatory regime includes account open and closed dates, types of credit, credit limits, financial hardship information and up to 24 months of repayment history information.

The Australian Retail Credit Authority is currently undertaking a consultation to determine how customers experiencing hardship should be reported to credit bureaus.

**Responsible lending regulatory framework (Consumer Credit)**

To support the economy's recovery from the COVID-19 pandemic and to simplify the credit framework, the government seeks to adjust the National Consumer Credit Protection Act and shift the owners on to borrowers as well as retaining important standards for lenders to ensure credit continues to flow. These changes have some conjecture within Australian Parliament and are currently under review.

**Financial Product - Design and Distribution Obligations**

The Australian Government has introduced major consumer protection reform in the form of the Design and Distribution Obligations for financial products. This regime is akin to product governance regimes introduced in the UK.

The Design and Distribution Obligations impose requirements on banks to ensure financial products are targeted and sold to the right customers. The reforms have been developed as a
result of recommendations from the Financial System Inquiry in December 2014. The Design and Distribution Obligations do not take effect until 1 October 2021.

**Modern Slavery**

Australian Banks are now subject to the requirements of the Modern Slavery Act 2018. Banks are required to submit Modern Slavery statements which will be published on a public register by the Department of Home Affairs.

**Climate change risk**

In 2021 APRA released a new prudential draft guide to assist banks and other regulated entities in managing climate related risks and opportunities. Consultation on this draft guidance closed in July 2021 and will be finalised towards the end of 2021.

APRA is undertaking a climate vulnerability assessment (CVA) with five banks. This a Council of Financial Regulators' (CFR) project, with APRA the lead agency. The CFR is comprised of the Reserve Bank of Australia, the Commonwealth Department of Treasury, the Australian Securities, and Investments Commission (ASIC) and APRA. Over the past couple of years APRA (supported by the CFR agencies) has sought to ensure banks are actively seeking to understand and manage the financial risks of a changing climate, just as they would other economic and operational risks.

The CVA is APRA's first project to quantify the potential financial risks of climate change for banks, as well as to uplift the banks' capabilities in addressing climate risk. This will also support in gaining an understanding of the availability of climate data which is important to understand the financial risks of climate change and support strategic decision-making for all businesses.

**Capital framework for authorised deposit-taking institutions**

In December 2020, APRA released a consultation package on revisions to the capital framework for authorised deposit-taking institutions (ADIs) implementing the BASEL III reforms. The ADI capital reforms are aimed to embed the industry's 'unquestionably strong' capital position and improve the flexibility of the framework to respond during periods of stress.

The new framework is due to come into effect in 1 January 2023 where ADIs are expected to be fully complaint including the determination and reporting of capital adequacy.

**Customer Dispute Resolution**

In July 2020, ASIC released updated guidance on complaints handling by financial firms in the newly created Regulatory Guideline (RG) 271. This was the culmination of a 12-month review of the existing guidance contained in RG 165. The guidance adopts a new broader definition of complaints to include those made via social media and amends the definition of small business.
ASIC has also reduced the timeframe to finalise consideration of standard complaints from 45 to 30 days and now requires Customer Advocate review to fall within these time limits. It also outlines requirements for the content of complaint responses as well as providing clear expectations around the identification and management of systemic issues (including the role of senior executives and Boards). RG 271 will apply to complaints received by financial firms on or after 5 October 2021. Until that date, RG 165 will continue to apply.

**Domestic violence**

On 28 May 2020, the Australian Transaction Reports and Analysis Centre (AUSTRAC) announced a change to the AML/CTF customer ID and verification Rule to help people experiencing family and domestic violence. Under the rule, if a customer cannot produce their driver's license or birth certificate, or show a different address, banks and other regulated businesses can use alternative ways to verify their customer's identity. For example, using a reference (from say a doctor or from a manager of a refuge of shelter).

Opening a bank account separate from an abuser is an important step in escaping domestic violence so government benefits, grants, and/or wages can be received. However, when fleeing a violent situation, it is often not possible to collect identification documents, or they are sometimes deliberately withheld by a perpetrator, or they do not show a new address. This can make proving an identity to usual bank standards very difficult.

The change gives banks the flexibility to use alternative methods for verifying a customer's identity for those experiencing family domestic violence while still maintaining due diligence processes to confirm a customer's identity.

**Electronic transactions and electronic mortgages**

To help consumers and businesses during Covid-19 restrictions, the Australian Commonwealth government and some state governments have passed emergency regulations that remove some requirements for documents to be signed on paper and/or witnessed in person. Key temporary regulations are:

- **Commonwealth**: allowing companies to sign documents including deeds electronically and use split execution. Also allow companies to hold virtual AGMs or have a mix of in person and virtual attendance. These temporary reforms lapsed in March 2021 but have been reinstated in August 2021. The government is also consulting on further legislation to make these reforms permanent.
- **States**: One state has made permanent reforms allowing documents including deeds to be signed electronically. Other states have made various reforms that allow electronic signing of documents including mortgages and/or the use of audio-visual methods to witness the signing of documents.
State and Commonwealth Treasurers are discussing making these and further reforms, including whether the use of electronic signatures with sufficient technological safeguards can replace the need for signatures to be witnessed.

Temporary reforms made by states will expire from September 2021, and these state governments have been asked by industry to consider extending the temporary regulations or making the regulatory changes permanent.

**Debt Management firms**

To protect consumers from potential predatory practices of debt management firms, in April 2021, the Government introduced new laws that now require providers of these services to hold an Australian credit license.

Historically, debt management firms who provided these services were not regulated under the National Consumer Credit Protection Act 2009. The new regulations specified that, from 1 July 2021 providers of debt management services must hold an Australian credit licence with an authorisation that covers debt management services.

**AML/CTF**

Anti-money laundering / counter terror financing is a critical area of regulation for Australian banks where significant resources are invested on compliance.

In June 2021, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 Rules were reformed to:

- Clarify obligations regarding customer due diligence before providing a designated service;
- Strengthen the protections for correspondent banking relationships;
- Expand the circumstances in which reporting entities can rely on a third party for customer identification and verification; and
- Expand the exceptions to the prohibition of tipping off.

**Remediation**

In December 2020, the Australian Securities, and Investments Commission (ASIC), released a consultation on their proposed updates to their regulatory guidance on remediation. The updated guide would expand its scope to include all licensees who hold an Australian financial services license or Australian credit license, and trustees of regulated superannuation funds (but not self-managed superannuation funds), approved deposit funds or pooled superannuation trusts, and retirement savings account providers.
ASIC continues to engage with the industry on this updated regulatory guide, with finalisation due in the end of 2021.

**Payments**

There are three key regulatory developments in the payments system.

1. The government has undertaken a review of the payments system regulatory architecture, with the final report completed and awaiting government approval for publication. The review is expected to conclude that the payments regulatory regime has served Australia well, but several relatively small adjustments will be needed to ensure the payments regulatory regime remains fit for purpose in the future. Key changes include technological innovations that expanded the payments system from a small number of payments systems and financial institutions to an ecosystem that includes big tech and fintechs.

2. The Reserve Bank of Australia is undertaking a review of retail payments. Issues under consideration include ensuring merchants have a choice of how to route their debit card payments, adjustments to debit and credit card scheme interchange fees prescribed under regulation, and regulation of new payments participants or products such as ‘buy now pay later’ and digital wallets. The last issue may be subject to the outcomes of the government’s payment system review.

3. The Australian Securities and Investments Commission is undertaking a review of the ePayments Code. It is voluntary to subscribe to the Code, which sets out the rights and obligations of financial institutions and customers in relation to accessing and making electronic payments, including protecting of passwords, and how to deal with mistaken (i.e., fat finger error) payments. A key question is clarifying whether and how the Code applies to scams.

**Cybersecurity**

The Department of Home Affairs is consulting on an expanded regime for regulating ‘critical infrastructure’ in Australia. This regime will expand from physical infrastructure such as ports, to key economic sectors including banking and financial services. The regime will allow the Department to make rules on positive security obligations for each critical sector. The government will also have broad powers to issue directions on cyber security matters and powers to ‘step in’ to a critical infrastructure asset during a cyber-attack.

**Digital identity**

The Digital Transformation Agency is consulting on proposed legislation to establish a digital identity system in Australia. The legislation would allow state and territories governments to participate in the Commonwealth digital identity system and for private sector entities to become participants in the system. The government ID system is not intended to be the only
digital ID that can be used in Australia, and this legislation is not intended to apply to private sector digital ID schemes.

**Deregulation**

To support in economic recovery the Australian Government is taking a new whole-of-government approach to regulatory policy under the Deregulation Agenda.

With a focus on reducing barriers affecting Australia's productivity growth and competitiveness, the agenda will aim to make sure regulations are well-designed, fit-for-purpose and support businesses to grow and create jobs.

The Australian Government has committed to:

- improve the accountability and transparency of regulator performance
- share best practice
- build regulator capability, and
- drive a culture of regulator excellence.

To help achieve this, the Australian Government has released refreshed expectations for regulator performance and reporting which is currently under consultation.
Canada

Executive Summary

Canada’s banking system continues to be widely considered one of the safest in the world. Policy-making authority and regulatory oversight for Canada’s banks are undertaken by a number of federal bodies. Prudential regulation is conducted by the Office of the Superintendent of Financial Institutions (OSFI), while consumer-facing market conduct is regulated by the Financial Consumer Agency of Canada (FCAC). Deposit insurance is provided by the Canada Deposit Insurance Corporation (CDIC). The Bank of Canada (BoC) and OSFI are active members of the Basel Committee on Banking Supervision. Canadian regulators have been active in adopting new and revised global regulatory standards.

Federal financial services legislation, including the Bank Act that governs the activities of banks in Canada, is required to be reviewed every five years. The current review was scheduled to conclude in 2017, but the 2016 federal budget postponed the conclusion of the review until 2019. The formal review process did commence in 2016, and the Canadian banks provided feedback to the federal government on what modifications to the bank legislative and regulatory regime should take place in the context of the 2019 review, with particular emphasis on measures that will facilitate the policy objectives of modernization and innovation. The federal government’s first budget implementation bill for 2018 introduced changes to the Bank Act intended to facilitate innovation by easing current restrictions on banks’ ability to engage in financial technology (‘fintech’) activities and invest in fintech companies. The budget implementation bill also extended the review process to 2023 to allow the government to make further changes to the Bank Act as they deem appropriate. In budget 2021, the government further extended the Bank Act review process to 2025.

The second budget implementation bill for 2018 introduced a comprehensive federal financial consumer protection framework. The supporting regulations for the financial consumer protection framework were published in August 2021 and the framework and supporting regulations will take effect on June 30, 2022.

The federal government released its Fall economic statement in November 2020 and followed up with its 2021 budget in April 2021 (the government’s first budget since 2019). Later that same month, the federal government introduced its first 2021 budget implementation bill (Bill C-30) that received Royal Assent in June 2021.
Federal Financial Legislation and Regulations

2021 Federal Budget Measures

The Government of Canada’s 2021 budget made a number of announcements relevant to the banking industry. The government announced measures related to the oversight of retail payments, clarifying the Bank of Canada’s authority to oversee payment exchanges, financial market infrastructure resolution, the extension of COVID-19 emergency benefits, housing, the development of a voluntary code to help support “the inclusion of women and other underrepresented entrepreneurs as clients in the financial sector”, data initiatives (including additional funds to combat cybersecurity), strengthening the Canada Deposit Insurance Framework (and other changes to the Canada Deposit Insurance Corporation Act) and capital and markets stability and enforcement (signaling the government’s continued commitment to advance a federal securities oversight body), and the implementation of a Digital Services Tax. The budget also introduced a $15 per hour federal minimum wage and the government’s intention to consult on lowering the criminal rate of interest in the Criminal Code (predatory lending), and lower credit card transaction fees (interchange fees).

AML/ATF Measures

Amendments to the PCMLTFA Regulations

On February 15, 2020, the Department of Finance published further proposed amendments to the amended regulations (Regulations) under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). These amendments further amend the Regulations that were contained in the package of amendments released on June 19, 2020 and are proposed to come into force on June 1, 2021. The amendments are meant to address the following areas:

- The 32 recommendations made by the House of Commons Standing Committee on Finance in November 2018 to strengthen the regime as part of the five-year parliamentary review of the PCMLTFA;
- The recommendations made in the series of reports commissioned by the Government of British Columbia in respect to heightened vulnerabilities of the casino and real estate sector to money laundering; and
- The June 2019 Financial Action Task Force (FATF) finalized standards that address the travel rule for virtual currency transfers.

On May 18, 2020, the final version of the amendments to the Regulations under the PCMLTFA were published. The amendments align Canada’s anti-money laundering and anti-terrorist regime with the FATF standards and level the playing field across reporting entities (REs) by applying stronger customer due diligence requirements and beneficial ownership requirements to designated non-financial businesses and professions (e.g., accountants and accounting firms,
British Columbia notaries, casinos, dealers in precious metals, sales representatives and developers), including alignment of virtual currency record-keeping obligations.

**Regulations of June 19, 2019 Coming into Force**

On June 1, 2020, certain provisions of the amending Regulations of June 19, 2019 came into force.

- Most notably, effective, June 1, 2020 REs under the PCMLTFA are now required to file suspicious transaction reports (STRs) with the Financial Transactions Reports Analysis Centre of Canada (FINTRAC) “as soon as practicable”. Previously, REs were provided with a 30-day period within which to file these reports. In light of the changes to the reporting requirements, FINTRAC updated its guidance in respect to submitting STRs to FINTRAC.
- In addition, the Regulations introduce a new category of money services businesses (MSB): foreign MSBs. Foreign MSBs are required to be registered with FINTRAC. Moreover, under the PCMLTFA financial institutions are prohibited from opening or maintaining an account for a foreign MSB, unless they are registered with FINTRAC.

On November 16, 2020, after industry consultation, FINTRAC published the Notice on forthcoming regulatory amendments and flexibility (the “Flexibility Notice”). The Flexibility Notice provides reporting entities with administrative flexibility for some of the requirements, primarily those related to reporting of LCTs and EFTs, which came into force June 2021. Due to a delay in the subsequent publication of FINTRAC’s guidance, FINTRAC published the Notice on the assessment of obligations coming into force on June 1, 2021 (the “Assessment Flexibility Notice”). The Assessment Flexibility Notice provides additional administrative flexibility from all the amendment regulations that came into force on June 1, 2021 – including an examination scope freeze.

**Upcoming Regulations**

The Government of Canada’s 2021 budget made announcements relevant to the AML/ATF regime in Canada. Specifically, it announced amendments that would bring armoured car services into scope of the PCMLTFA and enable FINTRAC to recover its compliance costs from reporting entities.

**New and Updated FINTRAC Guidance**

FINTRAC published a large number of new or updated pieces of industry guidance in 2021, to align with modifications to the Regulations of June 2019. These include:
- January 2021: Risk Assessment Guidance
- February 2021: Business Relationship Requirements; Ongoing Monitoring Requirements
- March 2021: When to Verify the Identity of Persons and Entities – Financial Entities; Beneficial Ownership Requirements; Recordkeeping Requirements for Financial Entities;
Correspondent Banking Relationship Requirements; Foreign Branches, Foreign Subsidiaries and Affiliates Requirements

- May 2021: Compliance Program Requirements; Third Party Determination Requirements; Politically Exposed Persons and Heads of International Organizations Guidance; Reporting Terrorist Property to FINTRAC; Travel Rule for Electronic Funds and Virtual Currency Transfers; Transaction Reporting Guidance: The 24-hour Rule; Prepaid Payment Products and Prepaid Payment Product Accounts
- June 2021: Methods to Verify the Identity of Persons and Entities; What is a Suspicious Transaction Report; Reporting Suspicious Transactions to FINTRAC; Reporting Large Virtual Currency Transactions to FINTRAC

Ministerial Directive on Financial Transactions Associated with the Islamic Republic of Iran

On July 25, 2020, in response to a call by the FATF to take measures in relation to the Islamic Republic of Iran on the grounds that state’s anti-money laundering or anti-terrorist financing measures are ineffective or insufficient, the Minister of Finance, in order to safeguard the integrity of Canada’s financial system, published a Ministerial Directive on Financial Transactions Associated with the Islamic Republic of Iran (MD). In light of the MD, FINTRAC released guidance related to the application and compliance with the MD.

Improving Beneficial Ownership Transparency

Further to the 2018 review of Canada’s anti-money laundering regime, the House of Commons Standing Committee on Finance recommended, among other things, that the Government of Canada work with the provinces and territories to create a pan-Canadian beneficial ownership registry for all legal persons and entities, accessible to competent authorities and REs with customer due diligence obligations. To this end, in 2020 the federal government released a consultation paper to seek feedback on potential measures to further increase beneficial ownership transparency via a public registry (or public registries). As part of its 2021 budget, the federal government announced its plan to implement a public corporate beneficial ownership registry by 2025.

Multiple provincial governments have introduced corresponding legislative amendments focused on beneficial ownership requirements and corporate transparency since 2020 – the most recent example of which was a consultation paper released by the Government of New Brunswick in July 2021. Furthermore, the FATF released a consultation paper to seek feedback from global stakeholder on proposed revisions to its Recommendation 24 on transparency and beneficial ownership of legal persons.
**Economic Sanctions**

Between July 2020 and July 2021, the federal government made the following changes to Canada’s economic sanctions:

- On September 28, 2020, in response to gross and systematic human rights violations, the Government of Canada published regulations under the *Special Economics Measures Act* (SEMA) in respect of Belarus. The regulations impose asset freezing and dealing prohibitions in respect of designated individuals and entities. These regulations have been subsequently amended multiple times since the date of publishing to include additional persons subject to the regulations and expand restrictions on certain activities;

- On February 26, 2021, the Government of Canada extended regulations under the *Freezing of Corrupt Foreign Officials Act* (FCFOA) in respect of Tunisia. The regulations were originally published in 2011 and impose asset freezing and dealing prohibitions in respect of designated politically exposed foreign persons. The Government’s February order extended the regulations for a period of five years beginning on March 24, 2021;

- On March 21, 2021, in response to gross and systematic human rights violations, the Government of Canada published regulations under SEMA in respect of the People’s Republic of China (“China”). The regulations impose asset freezing and dealing prohibitions in respect of designated individuals and entities;

- In the aforementioned period, and in response to ongoing human rights violations, the Government of Canada published amended regulations under SEMA in respect of Myanmar, Nicaragua, Russia, Belarus and the Ukraine. The regulations were amended to include additional designated individuals and entities to the list of persons subject to applicable asset freezing and dealing prohibitions, and/or expand the list of prohibited activities under the regulations;

The federal government’s budget also announced the government’s proposal to introduce amendments to the Justice for Victims of Corrupt Foreign Officials Act (JVCFOA, commonly known as the “Magnitsky Act”) to reduce the administrative burden resulting for obligations under the JVCFOA to file monthly sanctions reporting.
Cybersecurity Threats to Financial Institutions Operating in Canada


In 2021, the Office of the Superintendent of Financial Institutions (OSFI) updated guidance on Technology and Cyber Security Incident Reporting to contribute to an integrated approach and response to technology and cyber security incidents at federally regulated financial institutions.

Housing

Regulatory developments

After stakeholder consultations, OSFI updated its minimum qualifying rate (MQR) for uninsured mortgages (i.e., residential mortgages with a down payment of 20 percent or more) to the greater of the mortgage contract rate plus 2 percent or 5.25 percent, effective June 1, 2021. OSFI also said it will review and communicate the qualifying rate at a minimum annually, every December, well in advance of the high-volume housing spring season. Consistent with OSFI’s changes to the MQR, Finance Canada changed the minimum qualifying rate for insured mortgages (i.e., residential mortgages with a down payment of less than 20 percent) to a similar rule - the greater of the mortgage contract rate plus 2 percent or 5.25 percent, effective June 1, 2021. This brought alignment in the MQR regimes for insured and uninsured mortgages.

The Canada Mortgage and Housing Corporation (CMHC) announced that effective July 5, 2021, they were returning to their pre-July 2020 underwriting practices for homeowner mortgage loan insurance, specifically:

- consider a Gross Debt Service (GDS) ratio up to 39% and Total Debt Service (TDS) ratio up to 44% for borrowers who have a strong history of managing their payment obligations.
- At least one borrower (or guarantor) must have a credit score that is greater than or equal to 600 at the time of the request for insurance.

They also reiterated that they would consider the overall strength of the mortgage loan insurance application, including alternative methods of establishing creditworthiness for borrowers without a credit history. These changes back to pre-July 2020 underwriting practices occurred as CMHC deemed the changes not as effective as they had anticipated resulting in a decline in their market share.

The federal government and CMHC expanded the eligibility of the First Time Home Buyers Incentive (FTHBI). First time home buyers purchasing a home in the Toronto, Vancouver, or Victoria Census Metropolitan Areas are now eligible for an increased Qualifying Annual Income of $150,000 instead of $120,000, and an increased total borrowing amount of 4.5 instead of 4.0
times their qualifying income. This is to account for the higher cost of living in these cities. The rules remain the same everywhere else.

Winding down of COVID-19 response measures

Many of the COVID-19 response measures have expired. The mortgage deferral program that banks and mortgage insurers offered to households expired on September 30, 2020. By the end of the mortgage deferral program, 13 Canadian banks provided mortgage deferrals or skip a payment to close to 800,000 Canadians, representing close to 17% of bank mortgages. Similarly, the CMHC ended its Insured Mortgage Purchase Program (IMPP) on November 20, 2020. $5.8 billion of insured mortgages had been purchased out of commitment of $150 billion. Lastly, the Office of the Superintendent of Financial Institutions (OSFI) unwound the temporary increase to the covered bond limit on April 6, 2021.

Payments System Reforms

Canada continues to progress its multi-year initiative to modernize its payments infrastructure and deliver a new high-value system as well as real-time payments platform. Banks have been collaborating with the BoC and Canada’s payment system operator, Payments Canada, on the design of these systems and a phased deployment strategy that manages delivery risk and risk to the financial system. The first key delivery milestone occurred in August 2021 with the initial launch of Lynx, which is Canada’s new real-time gross settlement system for high-value payments.

Consistent with the government’s objective of promoting innovation and increasing competition in payments and financial services, in 2020 the federal government initiated consultations on reforms to the Canadian Payments Act to expand the types of entities that can be members of Payments Canada and participate in its systems. The banking industry in Canada has consistently supported broadening access to the payments system to promote greater innovation, subject to non-traditional payment service providers being governed by a regulatory framework that sets basic standards of protection for end-users and other measures to promote the safety and stability of the financial system.

In 2021, the long-awaited oversight framework was introduced in Parliament and received Royal Assent in June. Known as the Retail Payment Activities Act, the legislation requires specified payment service providers to register and to comply with requirements to manage and mitigate operational risk, and to safeguard end-user funds. The Bank of Canada is designated as supervisory authority and will oversee compliance with the Act. The Act will be brought into force pending the completion of the regulatory framework and work undertaken by the Bank of Canada to carry out its new duties – which is likely to occur in 2022.
Basel III in Canada

Before the consultations on the Basel III reforms, the Net Stable Funding Ratio (NSFR) was incorporated into the Liquidity Adequacy Requirements (LAR) Guideline and came into force in January 2020 in Canada for the domestic systemically important banks (D-SIBs). D-SIBs then began to disclose their NSFR results in Q1 2021 (i.e., as at January 31, 2021).

During 2021, and in order to incorporate Basel III reforms into domestic guidance, OSFI consulted on updates to their Capital Adequacy Requirements (CAR) Guideline and further updates to the LAR Guideline. The updates are expected to be finalized later this year and implemented in Q1 2023 with the exception of market risk and Credit Valuation Adjustment (CVA) Risk, which will come into effect in Q1 2024.

Updates related to COVID-19 Regulatory Relief Efforts

In relation to COVID-19, OSFI announced the unwinding of the special capital treatment of loans subject to payment deferrals at the end of August 2020. This was followed by the unwinding of other regulatory adjustments that were implemented during the pandemic related to market risk capital requirements and the covered bond limit. For the leverage ratio, OSFI is not extending the exclusion of sovereign-issued securities from the leverage exposure measure beyond December 31, 2021 although central bank reserves will continue to be excluded. In June 2021, OSFI also announced that the Domestic Stability Buffer (DSB) would be raised from 1.0% to 2.5% effective October 31, 2021.

Proportionality

OSFI is developing a framework for the small and medium-sized bank (SMSB) Capital and Liquidity requirements (including Pillar 2 and Pillar 3 requirements). The proportionality work is not focused on providing capital or liquidity relief to institutions, it is about ensuring that the requirements are more "fit for purpose" in the sense that risk sensitivity is improved and, where possible, complexity is reduced. There are three categories of SMSBs (i.e., Categories 1, 2, 3), which have reducing levels of requirements and overall less onerous requirements compared to those required for D-SIBs. In March 2021, OSFI issued for public consultation a draft guideline “SMSBs Capital and Liquidity Requirements”, as well as proportionality references in the CAR and LAR Guidelines. In August 2021, OSFI issued for public consultation a draft “Pillar 3 Disclosure Guideline for Canadian SMSBs. Both guidelines are expected to be finalized by the end of 2021 for implementation in Q1 2023 (i.e., Pillar 1 capital & liquidity requirements, and some Pillar 3 disclosures) and Q4 2023 (remaining disclosures).

Climate-related risks

In January 2021, OSFI published a discussion paper on climate-related risks to engage federally regulated financial institutions and pension plans, and other interested stakeholders in a
dialogue on the risks resulting from climate change that can affect safety and soundness. OSFI and the Bank of Canada also launched a pilot project on climate risk scenarios with certain federally regulated financial institutions. A report on the pilot project is expected by the end of 2021 with details on the specific scenarios, methodology, assumptions, and key sensitivities.

**IBOR Transition to Risk-Free Reference Rates (RFRs)**

The BoC’s Canadian Alternative Reference Rate Working Group (CARR) is leading discussions on enhancing the existing Canadian overnight risk-free rate, the Canadian Overnight Repo Rate Average (CORRA). It is also assessing a proposed Canadian term risk-free rate benchmark, which would act as a complementary reference rate for the Canadian market and would operate alongside the Canadian Dollar Offered Rate (CDOR).

**Financial Market Infrastructure (FMI) Resolution**

The final *Canadian FMI Resolution Regulations* (Regulations) developed by the Department of Finance were published in the Canada Gazette in July 2019. The Canadian Bankers Association’s (CBA) FMI Resolution Working Group, jointly with the International Swaps and Derivatives Association, had provided feedback on the proposed regulations, focusing on central counterparty (CCP) risk resulting from the Canadian Derivatives Clearing Service (CDCS).

In Canada, the BoC is the resolution authority for FMIs and is responsible for providing details on implementation of the Regulations in the form of a Guideline. The BoC issued the final Guideline in June 2020. Throughout the consultation process, the CBA had stressed the importance of harmonizing Canadian regulations and guidelines with evolving international standards.

**Regulation of Over-the-Counter Derivatives**

In April 2018, the Canadian Securities Administrators (CSA), an umbrella organization comprised of Canada’s 13 provincial and territorial securities regulators, issued a proposed derivatives registration regime, which would require banks to register and demonstrate compliance with the CSA requirements around the banks’ derivatives businesses. In June 2018, the CSA issued proposed rules relating to business conduct in derivatives transactions. In the fall of 2018, the Canadian banks provided comments on both proposals, including their potential impacts on the banking industry. The CSA is continuing to assess the proposals against the existing regimes to ensure any potential regulatory gaps and burdens are addressed.

The Quebec Court of Appeal issued its decision on the constitutionality of the Cooperative Capital Markets Regulatory System (CCMR), a proposed joint federal-provincial securities and systemic risk regulatory body, in May 2017. The Quebec Court found both the draft provincial and the federal statutes underpinning the CCMR to be unconstitutional. The Quebec Court’s decision was appealed to the Supreme Court of Canada, which rendered its decision in
November 2018. The Supreme Court ruled that the Constitution permits the implementation of pan-Canadian securities regulation under the authority of a single regulator according to the model established by the CCMR.

Open Banking

The Government of Canada indicated its intent to explore the merits of open banking in its federal budget in Spring of 2018. The Department of Finance subsequently appointed an Advisory Committee on Open Banking (the Committee) tasked with preparing a report to the Minister of Finance with recommendations on whether there are merits to proceeding with open banking in Canada.

In January 2019, the Department of Finance issued an initial consultation paper on the merits of open banking. The consultation paper asked for views on the potential benefits and risks of open banking for Canadian consumers and small businesses. In January 2020, the Committee issued its first Interim Report providing recommendations and findings from consultations with stakeholders. In the Report, the Committee recommended there are merits to open banking and recommended the development of a “consumer-directed framework.” In November 2020, the Committee initiated a second phase of open banking consultations, during which the Committee and industry stakeholders explored proposed elements of a Canadian approach to enable a system of open banking.

In August 2021, the Committee’s Final Report on open banking was released publicly. At a high level, the Final Report includes 34 recommendations on scope, governance, common rules, accreditation, and technical specifications and standards intended to enable open banking in Canada. The Committee recommends a “made-in-Canada” collaborative approach, but with distinct roles for government and industry. As an immediate first step, the Committee recommends identifying an open banking lead who would report to the Deputy Minister of Finance to oversee the implementation phase. At the same time, the Committee recommends setting up a purpose-built governance entity that would be responsible for the ongoing administration of the system once implementation is complete.

With the completion of the Committee’s Final Report, the recommendations put forward by the Committee are subject to assessment by the federal government. To date, details on next steps and timelines have not been released by the federal government.

Technology Risk Review

In its 2019-2022 strategic plan, OSFI stated it is undertaking a holistic review of technology risk as part of its strategic goal to improve regulated entities’ preparedness for, and resiliency to, non-financial risks. In September 2020, OSFI issued a discussion paper for stakeholder feedback titled Developing Financial Sector Resilience in a Digital World. The discussion paper sought feedback on a broad range of technology-related risk areas including cyber security, third-party risk, and advanced analytics.
In May 2021, OSFI released a high-level summary of feedback received from the consultation citing broad support from respondents for a technology-neutral, principles-based approach to technology risk management. At the same time, OSFI signaled next steps with a proposed schedule for upcoming guidance initiatives slated to begin in Q3 2021 through 2022/23; this includes guidance initiatives such as developing a new technology and cyber risk guideline and a revised draft guideline on third-party risk.
China

Significant Developments in the Banking Industry

- On September 13, 2020, the State Council, China’s cabinet, unveiled new rules to regulate market access of financial holding companies. The new regulation requires non-financial companies or other eligible entities, which control at least two financial institutions doing business across financial sectors, to apply to and get approval from the People’s Bank of China to establish financial holding companies. The move is to plug up regulatory loopholes and deepen financial reforms amid efforts to maintain market order, reduce risks and enhance support for the real economy, according to a notice released by the State Council. The regulation, which took effect on November 1, 2020, specifies rules on a wide range of issues concerning the market access of financial holding companies, including registered capital, shareholders, actual controllers, capital replenishment and risk management.

- China has established a countercyclical capital buffer mechanism to diversify the macro-prudential policy toolbox, said the country's central bank and banking and insurance regulator. It took effect on September 30, 2020, according to a statement on the People’s Bank of China (PBOC) website, citing a circular jointly released by the PBOC and the China Banking and Insurance Regulatory Commission. The two departments will regularly assess and adjust the countercyclical capital buffer requirements to prevent systemic financial risks upon comprehensive consideration of the macroeconomic and financial situation, leverage ratio level, stability of the banking system, and other factors, said the statement. The mechanism will further promote the sound operation of financial institutions in the banking sector and enhance the countercyclical adjustment capacity of macro-prudential policies, the statement noted. It will also help to mitigate the negative impact of pro-cyclical fluctuations and sudden shocks of financial risks, and maintain the stable operation of China's financial system, said the statement.

- China will further optimize cross-border Renminbi (RMB) policies and stabilize foreign trade and investment, according to a circular posted on the website of the People’s Bank of China, the country’s central bank. China will promote the facilitation of RMB settlement, simplify the cross-border RMB settlement process, optimize the management of cross-border RMB investment and financing, and facilitate overseas institutions' use of RMB settlement accounts, said the circular. The circular came into effect on Feb. 4, 2021. The bank said it would strengthen instructions to commercial banks in China and continue improving cross-border RMB policies to ensure that cross-border settlement in the currency could serve the country’s real economy and facilitate trade and investment.

- On July 16, 2021, China's central bank released a white paper on the progress of the country's digital fiat currency, the e-CNY, saying that it would steadily push forward pilot
schemes of its digital yuan. The e-CNY is the digital version of the fiat currency issued by the People's Bank of China (PBOC). It is a value-based, quasi-account-based and account-based hybrid payment instrument with legal tender status and loosely coupled account linkage, the white paper clarified, adding that the e-CNY is "mainly a substitute" for cash in circulation and will coexist with physical yuan.

The PBOC began its e-CNY research and development (R&D) project at the end of 2017. Large commercial banks, telecom operators and internet companies with significant assets, large market shares and strengths in technology development were selected to participate in the project. Since the end of 2019, the PBOC has launched e-CNY pilot programs in Shenzhen, Suzhou, Xiong'an and Chengdu. Since November 2020, Shanghai, Hainan, Changsha, Xi'an, Qingdao and Dalian have joined the pilot programs. As of June 30, 2021, the e-CNY has been applied to over 1.32 million scenarios, covering utility payments, catering services, transportation, and shopping and government services.

Significant Developments in the Securities Industry

- China has adopted an amendment to its criminal law to intensify crackdowns on securities and futures crimes, aiming to provide a stronger legal guarantee for the country's ongoing capital market reform and promote healthy development of the sector. The criminal acts of fraudulently issuing securities and disclosing information, providing false supporting documents and manipulating the market will attract tougher punishment, according to Amendment XI to the Criminal Law adopted at a Standing Committee session of the National People's Congress, China's top legislature. Under the amendment, the maximum sentence for fraudulent securities issuances will be raised to 15 years from five, while the maximum prison term for fraudulent information disclosures will be increased to 10 years, with the cap on fines to be abolished. The amendment also stipulates heavier penalties against controlling shareholders and actual controllers. Behaviors such as organizing fraudulent securities issuances or concealing relevant matters will also be subject to the amendment.

- Chinese authorities have unified the rules on information disclosure concerning all aspects of a company's corporate credit bonds, with the aim of better protecting investors. On December 28, 2020, the People's Bank of China (PBOC), the National Development and Reform Commission and the China Securities Regulatory Commission jointly published the rules, which took effect on May 1, 2021. In China, companies can issue corporate credit bonds, which include non-financial enterprise debt financing instruments, corporate bonds and enterprise bonds, in the inter-bank market and exchanges. Based on the practice of the domestic market and drawing on international experience, the new rules unify the requirements regarding information disclosure on issues such as essential documents, contents, timing and frequency, according to a statement posted on the website of the PBOC, the central bank. The rules also make detailed requirements on the contents, structure and formats of bond prospectuses and periodic reports. The PBOC said these more exact requirements for formulating bond prospectuses would prevent companies
from copying templates and simplifying the necessary contents, as well as clarifying rights and responsibilities and helping to protect investors' rights and interests.

- China has adopted an amendment to its criminal law to intensify crackdowns on securities and futures crimes, aiming to provide a stronger legal guarantee for the country's ongoing capital market reform and promote healthy development of the sector. The criminal acts of fraudulently issuing securities and disclosing information, providing false supporting documents and manipulating the market will attract tougher punishment, according to Amendment XI to the Criminal Law adopted at a Standing Committee session of the National People's Congress, China's top legislature. Under the amendment, the maximum sentence for fraudulent securities issuances will be raised to 15 years from five, while the maximum prison term for fraudulent information disclosures will be increased to 10 years, with the cap on fines to be abolished.

**Significant Developments in the Insurance Industry**

- China Banking and Insurance Regulatory Commission (CBIRC) requests comment on a revised regulation on foreign insurance companies. The revised regulation will mainly clarify access conditions for foreign insurers and overseas financial institutions, fine-tune shareholder change and access requirements, and scrap foreign ownership caps, according to the CBIRC. New market access conditions will not be added and entry barriers will not be raised under the revised regulation, the CBIRC said, adding that the domestic and foreign insurers will be able to conduct business under the same rules. The revised regulation aims at promoting a higher-level opening-up while continuing to strengthen risk management and control, according to the CBIRC.
Germany

Introduction

In the period from July 2020 to June 2021, the resilience of the German banking and financial sector was tested by several major events. Nevertheless, the sector was able to withstand these pressures and continue to support the economy. Just as the first shoots of economic recovery began to appear after the COVID event, the full extent of the fraud scandal involving German payment processor and financial services provider, Wirecard AG, was revealed. The scandal led to a number of legislative measures aimed at strengthening financial market integrity. Further legislative activity in financial services included transposing the amendments of the EU banking regulatory framework in response to the COVID event into German national law, revising the risk management and IT security frameworks and creating the legal basis for securities to be issued in Germany by electronic means. As in other jurisdictions, the focus was also on measures related to environmental, social and governance (ESG) objectives, resulting in the publication of the German Sustainable Finance Strategy as well as the German Supply Chain Due Diligence Act. Finally, several legislative pieces in the areas of anti-money laundering and taxation were also introduced and adopted. The following sections outline these legislative developments in detail.

Corporate liquidity in the aftermath of the COVID event

The massive increase in demand for liquidity that affected companies of all sizes at the start of the COVID-event was largely met by bank loans and subsidy programs. By mid-2020, enterprises were starting to give back a large proportion of the liquidity that they had previously received. Small and medium-sized enterprises were able to increasingly rely on direct government grants. Given the continued uncertainty, demand for investment loans remained very subdued between July 2020 and June 2021.

German Act to Strengthen Financial Market Integrity (Finanzmarktintegritätsstärkungsgesetz – FISG)

In the aftermath of the Wirecard fraud scandal – where a company listed on Germany’s stock market index DAX went bankrupt after it was discovered that €2bn of the assets on its balance sheet did not in fact exist – German legislators drafted and adopted a law aimed at strengthening regulation and supervision in order to prevent any recurrence of such fraud cases in future.

The measures adopted focus on several stakeholders. To strengthen the auditing process, supervision of auditing firms by the German Auditor Oversight Body
(Abschlussprüferaufsichtsstelle – APAS) will be strengthened, auditing firms will be liable for up to €16m when auditing a publicly traded company and publicly traded companies will have to change their auditor every 10 years.

Also, the dual system of financial reporting enforcement in Germany has been abandoned and the privately organized Financial Reporting Enforcement Panel (DPR/FREP) will be integrated into Germany’s Federal Financial Supervisory Authority (BaFin). This will streamline the process and ensure that suspicious activity or reporting is assessed swiftly. BaFin’s right to investigate has thus been strengthened as well. Furthermore, the internal governance requirements for publicly traded companies have been amended.

Legislators have also made changes over and above measures closely linked to the Wirecard case. To improve consumer protection, BaFin has been mandated to carry out mystery shopping and evaluate the conduct of banks. Furthermore, outsourcing rules have been amended. Third-country outsourcing companies are required to appoint an authorized recipient in Germany. In some cases, banks will have to report their intention to use outsourcing prior to concluding an agreement. BaFin has been given direct supervisory power over outsourcing companies, with the ability to request information, for example.

Last but not least, the structure and organization of BaFin has been externally assessed. An enforcement task force has been set up to further improve BaFin’s ability to detect fraudulent behavior, as has a supervisory department which will focus on institutions that are part of a fast growing and/or complex company (focus supervision). This department will have a higher supervisor per institution ratio than other departments. Furthermore, BaFin is increasing its efforts to become a more data-driven and digitized supervisor by setting up a data cockpit and planning to make better use of artificial intelligence in order to analyze not only existing data, but also (social) media and other sources.

**German Risk Reduction Act**

The Act on the Implementation of Directives (EU) 2019/878 and (EU) 2019/879 on Risk Reduction and Strengthening Proportionality in the Banking Sector (Risikoreduzierungsgesetz – RiG) came into force in December 2020. It transposes the requirements of the EU banking package (amendments to the CRD and BRRD) into national law. This German omnibus act primarily amends – among other laws – the German Banking Act (Kreditwesengesetz – KWG), the Restructuring and Resolution Act (Sanierungs- und Abwicklungsgesetz – SAG) and the German Securities Trading Act (Wertpapierhandelsgesetz – WpHG).

Implementation of the CRD made it necessary to adjust the KWG with respect to the approval and supervision of certain financial holding companies, to specification of the scope of Pillar 2 capital requirements, to macroprudential instruments, to the exemption of certain development banks from the direct scope of application of the CRD and to rules on remuneration.
The SAG essentially implements the amended requirements of the BRRD, which mainly relate to institution-specific add-ons for G-SIs and institution-specific MREL requirements for non-G-SIs.

In addition to further reducing risk and strengthening the resilience and stability of the financial sector, the administrative relief for small, non-complex institutions envisaged in the banking package (governance rules, reporting requirements) has been implemented with the principle of proportionality in mind.

**Revision of the Minimum Requirements for Risk Management**

In the first half of 2021, BaFin and the central bank of the Federal Republic of Germany (Deutsche Bundesbank) consulted on their revised Minimum Requirements for Risk Management (MaRisk). Once published, compliance with the new rules will be mandatory.

The revision was essentially prompted by changes to international requirements. The most recent revision to MaRisk implements the EBA Guidelines on management of non-performing and forborne exposures (NPE Guidelines), on outsourcing arrangements (Outsourcing Guidelines) and on ICT and Security Risk Management (ICT Guidelines). As always, BaFin and the Bundesbank have tightened requirements in areas where their ongoing supervision of banks has found room for improvement in terms of implementation and where clearer wording can eliminate potential confusion.

As part of the revision, the Banking Supervisory Requirements for IT (Bankaufsichtliche Anforderungen an die IT, BAIT) have been updated too.

The BAIT covers the following areas:

- IT strategy
- IT governance
- management of information risk
- management of information security
- operational information security
- management of user access rights
- IT projects and the development of applications
- operation of IT systems
- outsourcing and other external procurement of IT services
- management of IT emergencies
- management of relationships with payment service users
- critical infrastructures
New IT Security Act for the protection of essential services (critical infrastructures)

A revised version of the IT Security Act (IT-Sicherheitsgesetz) came into force in May 2021. It specifies the organizational and technical measures that operators of essential services should put in place to avoid disruption to the availability, integrity, authenticity, and confidentiality of IT systems, components, or processes. The IT Security Act implements the requirements of Directive (EU) 2016/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and information systems across the Union (NIS Directive). Also, the corresponding Ordinance was revised, and a “Second Ordinance Amending the Ordinance on the Identification of Critical Infrastructures (BSI-Kritisverordnung)” will enter into force on January 1, 2022. Both revisions take up the results of the evaluation of the previous IT Security Act and Ordinance as well as expected changes from the current review of the NIS Directive.

German Electronic Securities Act

The German Electronic Securities Act (Gesetz zur Einführung von elektronischen Wertpapieren – eWpG) came into force on June 10, 2021. The Act creates the legal basis for securities to be issued in Germany by electronic means, i.e., without a certificate. These “electronic securities” have the same legal status as securities in the form of a certificate. They can now be created in an electronic register or issued as crypto-securities using distributed ledger technology. The Electronic Securities Act currently covers only bearer bonds and investment fund units. Other types of securities, such as electronic shares, are to follow at a later date. There are two kinds of electronic securities register: a central register for electronic securities and a crypto-securities register. Registrars must hold corresponding licenses. At present, investment fund units can only be entered in a central register. Technical details about the registers and rules governing their management will be specified in a regulation, on which the market was consulted in Q3 2021. German banks see the law as a boost to digitization that will make the German financial center fit for the future.

German Sustainable Finance Strategy

In May 2021, the federal government adopted its sustainable finance strategy for Germany. Its aim is to pave the way for Germany to become the leading location for sustainable finance. The strategy includes a total of eight objectives and 26 individual measures to support the numerous European initiatives in this field. Particular importance has been placed on making sure the regulations are consistent and practicable. Among other things, the strategy advocates expanding sustainability reporting obligations and setting up a European Single Access Point where information about sustainability can be collated centrally and made available accordingly. In addition, the federal government intends to place a greater emphasis on the social aspects of sustainability. It also wants to improve methods for measuring social sustainability, biodiversity and the circular economy. Furthermore, the strategy lays out plans
to evolve state-owned investment and development bank, the *Kreditanstalt für Wiederaufbau*, into a transformation bank.

**The German Supply Chain Due Diligence Act**

The German Supply Chain Due Diligence Act was adopted on June 11, 2021 by the Bundestag. It forces companies to assume more responsibility in respecting human rights and environmental standards globally. Enterprises are to have responsibility across the entire supply chain, but the level of responsibility is staggered according to the degree of influence. Banks will naturally be affected by the legislation as well. The most recent amendments to the draft bill concerned its scope (inclusion of foreign companies with branches or subsidiaries in Germany) and civil liability (no liability beyond regulations included in the bill). Due to the controversial discussions that took place during the preliminary stages, it is highly likely that specialists in this field will be looking very closely at how the regulations have been formulated, even now the bill has been adopted by the Bundestag. The Association of German Banks will accompany these developments.

**Anti-Money Laundering**

Towards the end of the 19th legislature period of the German Bundestag, there was renewed focus on laws amending the Money Laundering Act (*Geldwäschegesetz*) and the accompanying money laundering criminal provision in Section 261 of the German Criminal Code. Additional regulations have also been issued by the Federal Financial Supervisory Authority (BaFin). Germany has also set up a public-private partnership, the Anti Financial Crime Alliance, whose core activity is exchanging information on the current modi operandi of money launderers. It is worth highlighting the following developments in more detail:

- In adopting the draft bill to foster criminal sanctions against money laundering (*Gesetz zur Verbesserung der strafrechtlichen Bekämpfung der Geldwäsche*) as of March 9, 2021, Germany has now joined those countries that have taken an “all-crimes approach” by abandoning the previous catalogue of predicate offences that apply to money laundering. The short-term consequence of this change in German law, which actually goes beyond FATF (Financial Action Task Force) recommendations on predicate money laundering offences, has been an unprecedented increase in the number of suspected illegal gambling offences being reported to Germany’s Financial Intelligence Unit.

- The Act to Strengthen Financial Market Integrity (described in detail in a dedicated section) came into force on June 3, 2021. The Act contains clarifications about supervisory responsibilities under the Money Laundering Act and the framework conditions for outsourcing bank-related services. In addition, regulations concerning balance sheet controls were fundamentally reformed.
• The Transparency Register and Financial Information Act (Transparenzregister- und Finanzinformationsgesetz) of June 25, 2021 served to systematically reorganize and partially modify provisions relating to customer due diligence (Know Your Customer, KYC) in the Money Laundering Act. Furthermore, the German transparency register, which holds data on beneficial owners, has been expanded into a full register. This represents an important step in advancing networking opportunities with similar registers in other EU member states.

• Discussions at the FATF on an appropriate approach to regulating the transfer of crypto-assets (new FATF Recommendation 16) resulted in the Federal Ministry of Finance submitting a draft crypto-asset transfer regulation (Kryptowertetransferverordnung) in June 2021. Its content largely corresponds to that of the European Commission’s proposal for a regulation “on information accompanying transfers of certain crypto-assets (recast)” (COM(2021) 422) published on July 20 of this year at EU level as part of its package of legislative proposals to combat money laundering. In terms of their content, both approaches are largely based on the regulatory concept of the EU Money Transfer Regulation 2015/847 (current version). Accordingly, when money is transferred, certain details about the originator and the recipient of the payment must be passed “along the chain” of service providers involved to the recipient.

• BaFin has been updating its interpretation and application guidance in relation to the German Money Laundering Act. On June 8, 2021, BaFin published a special section of guidelines specifically aimed at banks. It is now conducting a consultation process to revise the guidance’s general section which applies to all parties obligated under the Money Laundering Act. In the special section for banks, particular attention is paid to the new requirement for bank customers to present certificates of origin for cash transactions above certain thresholds. The purpose of revising the general section is to align supervisory guidance with the new legislative rules outlined above.

Taxation

Act implementing the Anti-Tax Avoidance Directive

The EU directives against tax avoidance practices (ATAD I, Directive (EU) 2016/1164; and ATAD II, Directive (EU) 2017/952) lay the foundation for uniform Europe-wide implementation of the OECD base erosion and profit shifting (BEPS) framework.

The German parliament passed the ATAD Implementation Act on May 21, 2021. Prior to this, there had been amendments to the draft law by the Finance Committee. The Act is intended to implement Article 5 (taxation of income and exit taxation) and Article 9, 9b (hybrid structures) of the ATAD and to reform the taxation of additional income (Articles 7 and 8 ATAD). The ATAD Implementation Act is intended to give the rules for ensuring a fair allocation of taxation rights at multinational companies a contemporary structure (Section 90 of the Fiscal Code of Germany
(Abgabenordnung, AO), Section 1 of the Foreign Tax Act (Außensteuergesetz, AStG)) and to create a clear legal basis for advance notification procedures (Section 89a of the Fiscal Code of Germany (AO)).

**Act implementing the Multilateral Instrument (MLI)**

The OECD BEPS initiative against aggressive tax structures includes a Multilateral Instrument (MLI) to enable participating states to amend double taxation agreements (DTAs) in a single act by means of a multilateral international treaty instead of time-consuming bilateral negotiations. Germany signed the Multilateral Instrument on June 7, 2017.

In Germany – unlike most other MLI states – the procedure will be two-stage. In a first step, the MLI was transposed by implementing legislation into national law. This enabled Germany to ratify the MLI in December 2020 and the MLI entered into force for the Federal Republic of Germany on April 1, 2021. In a second step, the concrete changes to the DTAs covered will be set out in separate legislation and applied domestically. Due to the use of the option in Article 35(7) MLI, the amendments will only become effective after Germany has notified the OECD of the conclusion of the domestic measures required with respect to a covered tax treaty.
Hong Kong

Banking industry overview

The Hong Kong banking sector continues to be strong in 2021 despite the prolonged Covid-19 pandemic and its impacts on the global economy. Banks remained well-capitalised with robust liquidity positions. The asset quality of the banking sector was also stable, with the classified loan ratio staying at a low level by both historical and international standards. Key figures of the banking sector’s performance are as follows:

- As at end-March 2021, the consolidated total capital adequacy ratio of locally incorporated authorised institutions (“AIs”) stood at 20.5%, well above the international minimum requirement of 8%.

- As at the first quarter of 2021, the quarterly average liquidity coverage ratio of category 1 institutions was 148.2%, well above the statutory minimum requirement of 100%. For category 2 institutions, their quarterly average liquidity maintenance ratio was 56.9%, also well above the statutory minimum requirement of 25%.

- As at end-March 2021, the classified loan ratio of the banking sector decreased to 0.89% from 0.90% a quarter earlier. The asset quality remained at healthy levels, significantly below the long-term average of 1.8% since 2000.

- In the first half of 2021, total loans increased by 7.2%, partly driven by initial public offering (“IPO”) loans. Excluding the IPO loans, total loans grew by 4.4% during the period.

In early 2020, relief measures were introduced by the Hong Kong Monetary Authority (“HKMA”) to help tide borrowers over Covid-19 driven downturn. These measures remain in place. The Pre-approved Principal Payment Holiday Scheme (“Holiday Scheme”) has been extended until October 2021. As at end-June 2021, for corporate customers, more than 72,000 applications for payment holiday under the Holiday Scheme or other forms of relief had been granted by banks, amounting to Hong Kong Dollar (“HKD”) 850 billion. For personal customers, banks had approved more than 39,000 cases of principal payment holiday for residential, mortgages and other personal relief loans, amounting to HKD50 billion. The Small and Medium-sized Enterprises (“SME”) Financing Guarantee Scheme was also enhanced in order to further alleviate the cash flow pressure of SMEs. Specifically, measures include enhancing the

---

1 References to “Hong Kong” in this document means the Hong Kong Special Administrative Region of the People’s Republic of China.
special 100% Loan Guarantee Scheme and deferring principal moratorium for 80% and 90% guarantee products until the end of 2021.

Green and sustainable finance

Promoting green and sustainable finance continues to be a key area of focus.

On the promotion of green and sustainable banking, steady progress has been made under the HKMA’s three-phased approach announced in May 2019. The HKMA has been pressing ahead with phase II of its plan to formulate the regulatory framework for addressing climate risk in the banking industry. The HKMA provided AIs with guidance on practices adopted by major banks in managing climate risks in July 2020, invited AIs to participate in a pilot exercise on climate risk stress tests in December 2020 and consulted the industry on a draft guideline on managing climate related risks in July 2021.

As part of its overall strategy to consolidate Hong Kong’s position as a regional green and sustainable finance hub, the HKMA is collaborating with other local regulators as well as the international community to advance the green agenda. On 9 November 2020, the International Finance Corporation, a member of the World Bank Group, and the HKMA signed a new partnership to encourage commercial banks in Asia to adopt strategies and targets to become greener.

To coordinate the financial sector’s work in this area, the Green and Sustainable Finance Cross-Agency Steering Group (“CASG”) announced its green and sustainable finance strategy for Hong Kong on 17 December 2020, which consists of six key focus areas - risk management, disclosure, capacity building, financial innovation, mainland opportunities and collaboration - and the following five key action points:

1. Mandate climate-related disclosures aligned with the Task Force on Climate-related Financial Disclosures recommendations across relevant sectors no later than 2025.

2. Adopt the Common Ground Taxonomy being developed jointly by Mainland China and European Union.

---

2 The CASG is co-chaired by the HKMA and the SFC. Other members include the Environment Bureau, the Financial Services and the Treasury Bureau, the Hong Kong Exchanges and Clearing Limited, the Insurance Authority and the Mandatory Provident Fund Schemes Authority.

4. Promote climate-focused scenario analysis to assess the impacts on financial institutions under different climate pathways, such as through the pilot climate risk stress testing exercise for banks and insurers, and the use of scenario analysis by large asset managers.

5. Establish a platform to act as a focal point for cross-sectoral capacity building, thought leadership and development of repository for green and sustainable finance resources.

The CASG subsequently launched the Centre for Green and Sustainable Finance in July 2021 to coordinate the efforts of financial regulators, Government agencies, industry stakeholders and academia in these areas, and established two working groups to develop strategies and roadmaps to promote capacity building and develop data repository and analytics capability.

In addition, the HKMA has also been putting in place necessary infrastructure and catalysts to enhance the sustainable finance ecosystem as well as promoting awareness and market participation. In February 2021, the HKMA supported the Government in issuing a further USD2.5 billion of green bonds to create demonstrative effect, comprising 5-year, 10-year and 30-year tranches which saw strong demand from global institutional investors. Building on this momentum, the Financial Secretary announced in the 2021/22 budget that the Government will double the size of the Government Green Bond Programme to HKD200 billion and increase the diversity in both the project types and channels of future issuances (including retail green bonds). The HKMA is also supporting the Government in implementing the enhanced Green and Sustainable Finance Grant Scheme, which commenced operation on 10 May 2021 and lasts for a period of three years, to cover eligible bond issuers and loan borrowers’ expenses on bond issuance and external review services. It aims to encourage more bond issuers and borrowers to use Hong Kong’s fundraising platform and professional services, and also encourage more financial institutions, professional service providers and external reviewers to use Hong Kong as a regional hub, boosting green finance activities here. The HKMA, as manager of the Exchange Fund, has also been leading by example by integrating environmental, social and governance (“ESG”) factors into its investment process and has been consciously making ESG investments, including into green, social and sustainability bonds, ESG including low-carbon equity mandates and low-carbon projects.
Fintech

_Fintech 2025 strategy_

On 8 June 2021, the HKMA announced a strategy called "Fintech 2025" to drive fintech development in Hong Kong. The five focus areas of the strategy are as follows:

1. **All banks go fintech** – to promote the all-round adoption of fintech by Hong Kong banks and encourage them to fully digitalise their operations from front-end to back-end. The HKMA is currently conducting a Tech Baseline Assessment exercise and has issued a circular on 18 June 2021 requesting all licensed banks with significant operations in Hong Kong to submit a three year plan for fintech adoption by end-2021. This will assist the HKMA in understanding banks’ current and planned fintech adoption strategies, as well as identifying those fintech business areas or specific technology types which may be underdeveloped and may benefit from the HKMA’s support.

2. **Future-proofing Hong Kong for Central Bank Digital Currencies ("CBDCs")** – the HKMA is strengthening its research work to increase Hong Kong’s readiness in terms of adopting CBDCs, at both wholesale and retail levels. On retail CBDC, the HKMA started a technical study with the Bank for International Settlements Innovation Hub ("BISIH") Centre in Hong Kong and has set up an internal cross-departmental working group to explore the prospect of issuing e-HKD. Meanwhile, the HKMA continued to support the People’s Bank of China (“PBOC”) on technical testing of digital Renminbi in Hong Kong for facilitating cross-border payments between Hong Kong and the Mainland. On wholesale CBDC, the Digital Currency Institute of the PBOC and the Central Bank of the United Arab Emirates joined the Multiple Central Bank Digital Currency ("mCBDC") Bridge project on 23 February 2021, which aims to further foster a conducive environment for central banks in Asia and other regions to jointly study the potential of blockchain in enhancing financial infrastructure for cross-border payments. The project is also strongly supported by the BISIH Centre in Hong Kong.

3. **Creating the next-generation data infrastructure** –To enhance Hong Kong’s financial data infrastructure, the HKMA has embarked on a number of initiatives, including the

---

3 The mCBDC Bridge project was formerly called “Project Inthanon-LionRock”, which was initiated by the HKMA and the Bank of Thailand.
Commercial Data Interchange ("CDI")\(^4\) and a distributed ledger technology-based credit data sharing platform to facilitate consent-based data sharing.

4. **Expanding the fintech-savvy workforce** – to increase the supply of fintech talent, the HKMA is collaborating with different strategic partners to groom fintech talent through various initiatives, including developing fintech-specific training programmes and qualifications, as well as promoting joint projects between the banking industry and academia. For example, the Industry Project Masters Network scheme will be on pilot starting from September 2021. It will provide internship opportunities for some Master’s students to work on fintech research and application projects and gain practical skills and experience in areas such as artificial intelligence and federated learning.

5. **Nurturing the ecosystem with funding and policies** – a new Fintech Cross-Agency Coordination Group was established by the HKMA in collaboration with various key stakeholders such as industry players and the academia to formulate supportive policies for the Hong Kong fintech ecosystem. In addition, preparatory work for the Hong Kong Growth Portfolio continues, with an aim to reinforce Hong Kong’s status as a financial, commercial and innovation centre. The HKMA is studying the enhancement of its Fintech Supervisory Sandbox by providing “through-train” vetting and funding arrangements for promising fintech solutions, such as those in the fields of Regtech and Cybersecurity, to reduce the time for the launch of innovative financial products in the market. The HKMA is exploring with the Innovation and Technology Commission of the Hong Kong Government the possibility of providing funding support to qualified fintech projects.

*Regulatory technology ("Regtech")*

The HKMA has been promoting Regtech adoption within the Hong Kong banking sector since 2018. Riding on this strong foundation, the HKMA most recently published a two-year roadmap to accelerate Regtech adoption and foster a larger and more diverse Regtech ecosystem in Hong Kong in November 2020, making reference to recommendations included in the White Paper "Transforming Risk Management and Compliance: Harnessing the Power of Regtech". The HKMA has rolled out a series of events and activities accordingly, key of which include: (i) a Global Regtech Challenge, i.e. a competition designed to raise the Hong Kong banking industry’s awareness of the potential of Regtech adoption, was launched in March 2021; (ii) the HKMA’s

\(^4\) CDI is a next-generation financial data infrastructure that aims to enable more efficient financial intermediation in the banking system and enhance financial inclusion in Hong Kong. Instead of multiple one-to-one connections between banks and sources of commercial data, such as utility companies, each bank and data provider will have a single connection to CDI. Data sharing will become more secure, efficient, and scalable.
flagship Regtech event “Unlocking the Power of Regtech” was successfully held on 30 June 2021 and attended by over 4,000 people from 51 jurisdictions across 5 continents; (iii) a new Regtech Adoption Practice Guide series – which follows on from the HKMA’s Regtech Watch series - was introduced to provide banks with detailed practical guidance on the implementation of Regtech solutions in a specific technology or application areas; and (iv) the inaugural Regtech Adoption Index, compiled based on a comprehensive analysis of the Regtech adoption status in the Hong Kong banking industry, was launched on 30 June 2021 to enable evaluation and monitoring of Regtech adoption in Hong Kong.

The HKMA has also promoted anti-money laundering and counter-terrorist financing (“AML/CFT”) Regtech adoption and published a report “AML/CFT Regtech: Case Studies and Insights” on 21 January 2021 highlighting the opportunities that Regtech offers to transform the effectiveness and efficiency of AML/CFT efforts and sharing comprehensive and practical, hands-on experience from banks that have actually implemented AML/CFT Regtech. The second issue of the Regtech Adoption Practice Guide series also provided guidance on the use of Regtech for AML/CFT efforts in the area of ongoing monitoring of customers.

Further initiatives to promote Regtech talent/skills development and knowledge sharing will continue to be rolled out over 2021.

**Open API Framework**

The HKMA continued to facilitate the banking sector’s development and adoption of Open API in accordance with the four-phase approach of the Open API Framework. As at end-May 2021, registrations from third-party service providers to access banks’ Phases I and II Open APIs exceeded 1000. On 13 May 2021, the HKMA announced the implementation plan for Phases III (account information) and IV (transactions) Open APIs. The initial batch of API functions are expected to be implemented progressively by the participating banks starting from December 2021. To promote secure and efficient implementation, the HKMA is facilitating the Hong Kong Association of Banks (“HKAB”)’s development of a set of standards covering key areas of customer experience and authentication, technical and data standards, information security, and operation standards.

**iAM Smart Initiative**

The iAM Smart initiative was launched on 29 December 2020 as one of the key infrastructure projects for smart city development announced in the Hong Kong 2017 Policy Address. iAM Smart provides all Hong Kong residents with a single digital identity and authentication to
conduct government and commercial transactions online. The HKMA collaborates with the Office of the Government Chief Information Officer (“OGCIO”) to promote the usage of iAM Smart. For example, the HKMA organised an iAM Smart briefing session together with OGCIO on 15 September 2020 for 47 banks to discuss potential use cases of iAM Smart. The HKMA also encourages banks to make use of OGCIO’s “iAM Smart” Sandbox Programme and the HKMA’s Fintech Supervisory Sandbox to conduct pilot trials of their iAM Smart initiatives.

The HKAB, with input from the HKMA, has updated the Frequently Asked Questions in relation to AML/CFT in May 2021 to help AIs understand how iAM Smart can be used in complying with the relevant AML/CFT requirements.

**Fintech Proof-of-Concept Subsidy Scheme**

The Fintech Proof-of-Concept Subsidy Scheme (the “PoC Scheme”), launched by the Hong Kong Government and administered by the Hong Kong Cyberport Management Company Limited, aims to encourage financial institutions to partner with fintech companies to conduct PoC projects on innovative financial services products. Phase 1 of the PoC Scheme, which opened for application between February and April 2021, received over 80 valid applications. 54 of them were approved, and around HKD6.1 million was granted in total. Examples of approved projects include financial services applications in the banking, insurance and securities sector, as well as cross-boundary and cross-sector applications. Phase 2 of the PoC Scheme opened for application from May to June 2021 and vetting of the applications is underway.

**Renminbi (“RMB”) banking business / Mainland opportunities**

Offshore RMB business has recorded steady growth, including with respect to bank deposits, trade settlement and Real Time Gross Settlement payments. Hong Kong also maintained its lead in processing global RMB payments. The HKMA designated nine AIs in October 2020 as Primary Liquidity Providers for the offshore RMB market. In November 2020, the PBOC and the HKMA renewed the currency swap agreement for a term of five years and expanded its size from RMB400 billion (HKD470 billion) to RMB500 billion (HKD590 billion), which facilitated the HKMA’s provision of liquidity to the market when necessary.

---

5 The PoC Scheme was launched by the Financial Services and the Treasury Bureau of the Hong Kong Government.
Eligible Collateral for the RMB Liquidity Facility

On 19 November 2020, the HKMA announced that the list of eligible collateral for the RMB Liquidity Facility will include the RMB, USD and Euro denominated debt securities issued in offshore markets by the PBOC, the Ministry of Finance of the People’s Republic of China, and the policy banks of the People’s Republic of China, namely Agricultural Development Bank of China, China Development Bank, and Export and Import Bank of China.

Bond Connect

The Bond Connect scheme continues to develop. In the first two months of 2021, Bond Connect recorded 276 trades daily on average. The daily turnover averaged RMB24.3 billion, up around 26% from the 2020 average of RMB19.3 billion. As of end-February 2021, Bond Connect onboarded 2,428 registered institutional investors.

Since start of 2021, new initiatives were launched to improve Bond Connect operations, including the extended settlement instruction cut-off time. On 5 March 2021, the HKMA issued a circular to all Hong Kong foreign exchange settlement banks providing guidance on an enhanced currency conversion arrangement involving onshore RMB under Northbound Bond Connect. The new arrangement is designed to give investors more flexibility in choosing the banks to conduct currency conversion and foreign exchange hedging. Following the success of Northbound Bond Connect, the HKMA has also formed a working group with the PBOC to study the framework of Southbound Bond Connect.

Greater Bay Area (“GBA”) initiatives

- **Wealth Management Connect (“WMC”)** – in June 2020, the PBOC, the HKMA and the Monetary Authority of Macao jointly announced the decision to implement the WMC. The HKMA, PBOC, China Banking and Insurance Regulatory Commission, China Securities Regulatory Commission, State Administration of Foreign Exchange, Securities and Futures Commission of Hong Kong (“SFC”) and Monetary Authority of Macao signed the “Memorandum of Understanding on the Launch of the Cross-Boundary Wealth Management Connect Pilot Scheme in the Guangdong-Hong Kong-Macao Greater Bay Area” on 5 February 2021 to agree on the principles of supervisory cooperation under the cross-boundary WMC. The regulators have been working closely with the industry in developing the implementation details and preparing for the launch of the WMC.

- **Tax initiatives** – the Comprehensive Avoidance of Double Taxation Arrangement (“CDTA”)
signed in November 2019 between Hong Kong and Macao entered into force to avoid double taxation in respect of Hong Kong taxes on income derived for any year of assessment beginning on or after 1 April 2021. The CDTA brings about a greater degree of certainty on tax liabilities for those who engage in cross-boundary business activities and will help promote bilateral trade and investment activities within the GBA.

- **eTradeConnect** – with the goal of providing importers and exporters with more convenient trade finance services, a PoC study was initiated to explore connecting eTradeConnect\(^6\) and the PBOC Trade Finance Platform. The first phase of the PoC study was completed in the fourth quarter of 2020. A pilot run was subsequently launched in October 2020 for banks in both Mainland China and Hong Kong to execute cross-border trade financing transactions. As of June 2021, cross-border trade finance transactions of trade value amounted to about HKD26 million were conducted via the platforms. The second phase of the PoC began in early 2021 and covers more types of trade activities and financing products.

- **Hong Kong-Shenzhen Innovation & Technology Park ("HSITP")** – the Hong Kong Government is taking forward the development of HSITP in the Lok Ma Chau Loop. The HSITP will be a knowledge hub and innovation and technology centre, converging enterprises, research and development institutions and higher education institutions from Hong Kong, Mainland China and overseas. The HSITP will focus on the development of six technology areas\(^7\) including fintech. It aims to provide a platform to attract talents and investments, facilitate tenants to expand overseas markets, thereby promoting the fintech sector’s growth in the GBA region.

**Belt and Road Initiative**

The Infrastructure Financing Facilitation Office ("IFFO") of the HKMA continues its work to facilitate infrastructure investments and financing by organising a number of well-attended seminars, workshops and roundtables to promote the Belt and Road Initiative. Among these events was the 5th Belt and Road Summit co-organised by the Hong Kong Government and the Hong Kong Trade Development Council held in November to December 2020. At the summit,

\(^6\) eTradeConnect is a blockchain-based trade finance platform officially launched in October 2018 under the facilitation of the HKMA. It is fully funded by a consortium of 12 major banks in Hong Kong.

\(^7\) Healthcare technologies, big data and artificial intelligence, robotics, new material, microelectronics, and Fintech.
the Hong Kong Government stated it would strengthen collaboration and partnership with other Belt and Road economies on various fronts, including the sharing of its technology to support the fight against Covid-19, the provision of professionals capable of meeting the wide-ranging service needs of Belt and Road projects, boosting green finance and sustainable investment along the Belt and Road, and promoting business partnerships with the Mainland's overseas Economic and Trade Co-operation Zones.

**Regulation and supervision of trust business in Hong Kong**

On 10 July 2020, the HKMA launched an industry consultation on a proposal to enhance the regulation and supervision of trust business in Hong Kong, including a draft Code of Practice for Trust Business to govern conduct of trust business. It is proposed that the Code of Practice will apply to all AIs and subsidiaries of locally incorporated AIs conducting trust business in Hong Kong. Other trustees that conduct trust business in Hong Kong will also be encouraged to adopt the Code. The consultation closed on 9 October 2020, and the HKMA is further engaging the industry to address the comments received.

**Implementation of Basel III in Hong Kong**

Legislative work is in progress with respect to the following amendments to implement the Basel regulatory standards:

- Amendments to the Banking (Capital) Rules (Cap. 155L) to reflect the revised Basel capital requirement on banks’ exposures to equity investments in funds and to implement the following two sets of capital standards under the Basel III reforms:
  - revision to the credit risk, operational risk, output floor and leverage ratio frameworks, whose target effective date has been revised to 1 July 2023 (from 1 January 2023) to provide more time for the industry to prepare for the implementation of the revised minimum standards; and
  - revised market risk and credit valuation adjustment ("CVA") risk frameworks where the industry will likewise be provided with an additional six-month time window. This means locally incorporated AIs will be required to implement the new market
and CVA risk frameworks for reporting purposes by 1 July 2023. The new frameworks will take full effect from a date no earlier than 1 January 2024.

- **Disclosure requirements** – the disclosure requirements associated with the above revised frameworks will take effect according to the effective dates of the corresponding frameworks described above.

The Banking (Exposure Limits) Rules (Cap. 155S) will be amended to incorporate certain technical refinements to enhance clarity and better reflect the policy intent of certain existing provisions, and to incorporate consequential amendments that may be necessitated by the implementation of the Basel III final reform package in Hong Kong from 1 July 2023.

On 17 May 2021, the HKMA announced that the jurisdictional Countercyclical Capital Buffer for Hong Kong remained unchanged at 1.0%.

**Anti-Money Laundering and Counter Financing of Terrorism regulation**

*Covid-19 and AML/CFT*

The HKMA has continued to issue guidance to assist AIs in sustaining efforts to cope with the ongoing Covid-19 situation and support operational responses which are consistent with the risk-based approach ("RBA"). In a circular issued in July 2020, the HKMA highlighted three key observations and industry practices in light of Covid-19:

- **Customer due diligence under social distancing and travel restrictions** – AIs have been using video conferencing to interact with customers in the course of onboarding and ongoing customer due diligence reviews. Some AIs utilise the flexibility provided in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("AMLO") to delay verifying the customer’s identity, while adopting appropriate risk mitigating measures. In September 2020, the HKMA issued further guidance to articulate key principles for remote on-boarding of corporate customers.

- **Pressure on AML/CFT resources** – to address the pressure on resources, AIs have been adopting a number of responses, which collectively have minimised potential impact to AML/CFT processes. These include reprioritising work on the basis of ML/TF risks, reallocation of staff, staggering office hours and equipping staff with work-from-home
capabilities. Some AIs are also expediting their exploration of Regtech solutions to reduce the number of false positives generated from transaction monitoring and screening systems.

- **Emerging threats and changes in customers’ behaviour** – AIs have increased their understanding of and vigilance to emerging Covid-19 related financial crime risks, including through the Fraud and Money Laundering Intelligence Taskforce ("FMLIT") and establishment of a Fraud Risk Management Taskforce under the HKAB in May 2020. Consistent with the global trend, some AIs identified changes in customer behaviour, such as increased digital payments and online transactions, and were working to incorporate their understanding of emerging risks into transaction monitoring rules and scenarios. The HKMA is seeing examples where Regtech is helping to build out a more collaborative, intelligence-led approach to financial crime risk management and that some AIs are applying advanced analytics to help detect networks and common vulnerabilities.

Moreover, in September 2020, the HKAB, with the HKMA’s support, held sharing sessions on financial crime trends observed, challenges encountered during Covid-19, and good practices of AIs in managing and mitigating money laundering and terrorist financing risks.

FMLIT, the Public-Private Partnership comprising of the Hong Kong Police, the HKMA and the banking sector, has continued to develop and plays an increasing role in the understanding and mitigation of financial crime threats. FMLIT membership has been expanded from 10 to 15 retail banks in December 2020 to widen the scope of intelligence sharing and address displacement effects. Seven alerts on prevalent financial crime threats including illegal bookmaking, telephone deception and Short Message Service phishing have been disseminated to all banks and Stored Value Facility licensees from July 2020 to June 2021 to help raise awareness and enhance preventive measures. To help boost these efforts and provide clarity on supervisory expectations, the HKMA issued guidance on 26 April 2021 to share key observations and good practices on the integration of external information and data, including intelligence received from FMLIT, into AML/CFT control systems.

**Virtual assets regulation**

In November 2018, SFC issued the “Statement on regulatory framework for virtual asset portfolio managers, fund distributors and trading platform operators” which set out a conceptual framework for a virtual asset trading platform operator to opt-in to be licensed by the SFC where it operates an online trading platform in Hong Kong and offer trading of at least one virtual asset which constitutes a ‘security’ under the Securities and Futures Ordinance (Cap.
Institute of International Bankers. Global Survey 2021

571). On 16 December 2020, the SFC granted its first virtual asset trading platform licence in Hong Kong under such opt-in scheme. The company chose to opt into the SFC’s virtual asset regime and successfully underwent the SFC’s rigorous vetting process. The licence permits the licensed corporation to provide regulated brokerage and automated trading services for virtual assets to professional investors.

In addition to SFC’s existing opt-in scheme, the FSTB published on 21 May 2021 consultation conclusions on the legislative proposal to introduce a licensing regime for virtual assets services providers (“VASPs”). The proposed regime seeks to regulate all centralised virtual asset exchanges, including those that only trade types of virtual assets which currently fall outside of the SFC’s jurisdiction. Under the proposed regime, VASPs that operate virtual asset exchanges in Hong Kong or target Hong Kong customers will need to apply for an SFC licence, and failure to do so would be an offence.

The Hong Kong Government aims to introduce the amendment bill into the Legislative Council in the next legislative session. In the meantime, the SFC will also prepare and publish for consultation the regulatory requirements for licensed VASPs, before commencement of the licensing regime for VASPs.

Resolution

The HKMA continues to set resolution standards which AIs need to comply with in order to enhance its effective use of the resolution powers in the event of the AIs’ failure or likely failure.

In line with the Financial Stability Board’s (“FSB”) international resolution standards, the HKMA has on 31 December 2020, released the consultation conclusions relating to rules on contractual stays on termination rights in financial contracts for AIs (“Stay Rules”) proposed to be made as subsidiary legislation pursuant to section 92 of the Financial Institutions (Resolution) Ordinance (Cap. 628) (“FIRO”). The Stay Rules require AIs incorporated in Hong Kong and certain of their group companies to include an appropriate provision in certain non-Hong Kong law governed financial contracts to the effect that the parties (other than an excluded counterparty) will be bound by a temporary suspension of termination rights that may be imposed by the HKMA as the resolution authority under section 90(2) of the FIRO. The Stay Rules are designed to address the cross-border risks to orderly resolution arising from the early termination of financial contracts by adopting a contractual approach, as advocated by the FSB, to giving effect to cross-border resolution actions. The Stay Rules were gazetted in June 2021 as the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination
Rights-Banking Sector) Rules and will come into operation on 27 August 2021, subject to the negative vetting procedure by the Legislative Council.

**Interest rate benchmarks**

The HKMA continues to engage the banking industry proactively throughout the period to ensure a smooth transition away from London Interbank Offered Rate ("LIBOR"). The United Kingdom Financial Conduct Authority confirmed in March 2021 that all LIBOR settings will either cease to be provided or be no longer representative immediately after 31 December 2021 for non-US dollar LIBOR and certain US dollar LIBOR settings and 30 June 2023 for the remaining US dollar LIBOR settings. In light of this, the HKMA, in consultation with the Treasury Markets Association ("TMA"), has developed the following transition milestones which AIs should endeavour to achieve:

- AIs should be in a position to offer products referencing the alternative reference rates ("ARRs") to LIBOR from 1 January 2021;

- Adequate fallback provisions should be included in all newly issued LIBOR-linked contracts that will mature after 2021 from 1 January 2021; and

- AIs should cease to issue new LIBOR-linked contracts by 31 December 2021.

The banking sector has made good progress in preparing for the transition from LIBOR to ARRs. On compliance with the transition milestones, most AIs have started to offer ARR products and included fallback provisions in new LIBOR contracts. All except a small number of AIs have adhered to International Swaps and Derivatives Association’s IBOR Fallbacks Protocol to implement fallbacks for relevant legacy derivatives contracts.

---

8 The United Kingdom Financial Conduct Authority has confirmed that all LIBOR settings will either cease to be provided by any administrator or no longer be representative:
- immediately after 31 December 2021, in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings; and
- immediately after 30 June 2023, in the case of the remaining US dollar settings (i.e. Overnight, 1-month, 3-month, 6-month and 12-month).
Cybersecurity

**Cybersecurity Fortification Initiative**

The HKMA launched the Cybersecurity Fortification Initiative ("CFI") in 2016 to promote the overall cyber security resilience of the banking industry. The initiative is underpinned by three pillars: the Cyber Resilience Assessment Framework ("C-RAF"), the Professional Development Programme ("PDP"), and the Cyber Intelligence Sharing Platform ("CISP"). Following a holistic review of the CFI and extensive industry consultation, the HKMA introduced the CFI 2.0 in November 2020, which came into effect on 1 January 2021. The CFI was enhanced to reflect the latest developments in overseas cyber practices including those relating to cyber incident response and recovery. The C-RAF 2.0 is being implemented by banks following a phased approach.

**Secure Tertiary Data Backup**

The HKMA considers Secure Tertiary Data Backup ("STDB") as an effective measure to enhance cyber resilience and data security of banks in Hong Kong. In response to the HKMA’s call, the HKAB formed a STDB Taskforce and issued the STDB Guideline on 30 April 2021. The STDB Guideline provides guidance to banks on the factors they need to take into account in deciding whether to set up an STDB and what implementation issues they need to overcome in ensuring the effectiveness of the STDB. Subsequently, the HKMA issued a circular on 18 May 2021 requesting all banks to critically assess the need for setting up an STDB to counter the risk of destructive cyber-attacks. All retail banks and foreign bank branches with significant operations in Hong Kong are expected to submit a report containing the result of their assessment.

**Insurance sector**

**Insurance Group Capital Rules**

In August 2020, the Insurance Authority ("IA") published its consultation paper on the draft Insurance (Group Capital) Rules (Cap. 41O) ahead of the proposed implementation of the new supervisory framework for multinational insurance groups ("Rules"), which came into effect as of 29 March 2021. The main objective of the Rules is to set out the requirements in relation to capital, regulatory reporting and public disclosure that apply to an insurance holding company in relation to its insurance group. The Rules apply to insurance holding companies which are designated by the IA as being subject to the supervisory framework for multinational insurance groups.
**Insurance-linked securities (“ILS”)**

The new regulatory regime for insurance-linked securities business commenced operation on 29 March 2021. The ILS is a risk management tool that enables insurers or reinsurers to offload risks that they have underwritten to the capital market by way of securitisation.

Further, on 3 May 2021, the IA also announced details of the two-year Pilot Insurance-linked Securities Grant Scheme (“Grant Scheme”) promulgated in the 2021/22 budget. The Grant Scheme provides an incentive for insurance companies and organisations to issue ILS in Hong Kong, while efforts are being made in parallel to map out a new regulatory scheme for Special Purpose Insurers set up in this connection.

**Adoption of Insurtech**

Social distancing measures during Covid-19 have spurred the application of Insurtech. In 2020 to 2021, the IA has facilitated the establishment of a shared virtual onboarding platform in the industry that could be used by different insurers (especially SME insurers with limited resources to build their own platform) to roll out cost effective solutions. The IA also conducted a survey on Insurtech with insurers to understand the progress of technology adoption in the market and chart the course for future Insurtech development.

**Securities sector**

**Investor protection measures**

The HKMA worked with the SFC to provide guidance to the industry on 8 September 2020 concerning the treatment for family offices in the assessment of the corporate structure and investment process for exemption from the suitability and disclosure requirements. On 23 December 2020, the HKMA and the SFC provided further guidance to streamline product due diligence and clarified a proportionate and risk-based approach in suitability assessment and disclosure processes especially for high-net-worth investors who are financially sophisticated. The HKMA also provided guidance on other investor protection aspects, including provision of investment services using non-face-to-face channels. Following a risk-based approach, the HKMA provided guidance to registered institutions in July 2020 to streamline the sale and distribution process for eligible plain vanilla and low-risk retail bonds issued by government and related organisations.
**Conduct requirements for capital market transactions**

On 8 February 2021, the SFC launched a consultation on proposed conduct requirements for capital market transactions, including the standards of conduct expected of firms in bookbuilding, pricing, allocation and placing activities, in Equity Capital Market and Debt Capital Market Transactions and the “Sponsor Coupling” Proposal. Comments on the consultation paper closed on 7 May 2021.

**Implementation of uncertificated securities market regime**

On 11 June 2021, the Hong Kong Government gazetted the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021 (“SFCL Ordinance”). Amongst other matters, the SFCL Ordinance establishes a legal framework for the implementation of a complete uncertificated securities market regime where investors will have the option of holding securities in their own names and without physical paper documents. The revised operational model provides investors the option of holding legal title to securities in uncertificated form through either: (i) a new feature provided within the clearing and settlement system of Hong Kong Exchanges and Clearing Limited and managed by a sponsoring clearing or custodian participant; or (ii) a new feature offered by the relevant issuer’s share registrar.

**Revised stamp duty on stock transfers**

On 11 June 2021, the Hong Kong Government gazetted the Revenue (Stamp Duty) Ordinance 2021 (“RSD Ordinance”). The RSD Ordinance raises the rate of stamp duty payable on contract notes for sale or purchase of Hong Kong stock from 0.1 per cent to 0.13 per cent of the consideration or value of each transaction payable by buyers and sellers respectively. It also correspondingly raises the rate of stamp duty payable on certain other transfers of such stock. The new rate of stamp duty on stock transfers comes into effect from 1 August 2021.
Malaysia

The containment measures that were implemented in the first quarter of 2020 at the start of the COVID-19 pandemic were eased in phases in the second and third quarters of 2020. The economy started to pick up slightly with the re-opening of most sectors. However, this was short-lived as a new wave of COVID-19 infections prompted the reinstatement of stricter containment measures in various states in the 4th quarter of 2020.

In the 2021 Budget which was announced in November 2020, the Government stated that it is applying the 6R approach, representing the six stages of Resolve, Resilient, Restart, Recovery, Revitalise and Reform with the aim of reopening the economy to prevent long-term structural damage.

As the pandemic continued to worsen at the end of 2020 and into 2021, various containment measures were implemented throughout the first half of 2021 in an attempt to curb the spread of the virus. On 1 June 2021, the Malaysian government imposed the Movement Control Order (MCO) 3.0 nationwide and only essential sectors were allowed to remain in operation. During this period, selected industries were to permitted to operate, schools were closed, and all social gatherings and inter-state travel were banned. International borders still remain closed and overseas travel restricted.

Financial Relief Measures

In March 2020, Bank Negara Malaysia (BNM), the Malaysian central bank, announced an automatic deferment of all loan/financing repayments (excluding credit cards) for individuals and small and medium sized enterprises (SMEs) for a period of 6 months, from 1 April to 30 September 2020. Following the expiry of this automatic deferment, banks in Malaysia continued to offer targeted repayment assistance specifically for individual borrowers who have lost their jobs in 2020 and to those individual borrowers who are suffering from a drop in income due to the COVID-19 pandemic. The additional specific assistance provided are as follows:-

a. Individual borrowers who have lost their jobs in 2020 and have yet to find a job could apply for an extension of the loan moratorium for a further 3 months; and
b. Individual borrowers who are still in employment but whose income has been affected due to the COVID-19 pandemic (e.g. as a result of reduced working hours, pay cuts, etc.) could request for a commensurate reduction in their monthly instalment for at least six months from 1 October 2020, depending on the type of loan/financing.

The targeted repayment assistance was enhanced in November 2020 to expand the scope of eligibility to include B40 borrowers who are recipients of Bantuan Sara Hidup (BSH) / Bantuan Prihatin Rakyat (BPR) as well as microenterprises with loans where the original facility amount is up to RM150,000.
In line with the announcement by the government on the National People’s Well-being and Economic Recovery Package (PEMULIH package) on 28 June 2021, the banks once again offered a 6-month moratorium on the instalment of all credit facilities (excluding credit cards) on an opt in basis for all individuals, microenterprises and SMEs that have been affected by the COVID-19 pandemic. For credit card facilities, banks offered to convert the outstanding balances into a 3-year term loan with reduced interest rates to help borrowers better manage their debt.

**Economic Stimulus packages**

Due to the economic challenges caused by the COVID-19 pandemic, the Malaysian government announced several economic stimulus packages since the start of the pandemic in March 2020, to help the people and businesses cope. Since March 2020 till August 2021, a total of eight economic stimulus packages have been announced. The following five packages were announced since September 2020:-

**Prihatin Supplementary Initiative Package (Kita PRIHATIN)**

On 23 September 2020, the Malaysian government announced the RM10 billion Kita PRIHATIN stimulus package. The target groups for this package included the B40, M40, local workers in various fields as well as micro traders. Among the initiatives under the Kita PRIHATIN package are an extension of wage subsidies, special grants for SMEs, and one-off assistance to households and individuals in the B40 and M40 categories.

**Malaysian Economic and Rakyat’s Protection Assistance Package (PERMAI)**

The PERMAI package announced on 18 January 2021 sought to implement 22 initiatives anchored on three main objectives, namely combating the COVID-19 outbreak, safeguarding the welfare of the people and supporting the business continuity. The PERMAI package totalling RM15 billion included expansion of the wage subsidy program and additional grants for microenterprises, among others.

**Strategic Programme to Empower the People and Economy (PEMERKASA)**

Another new stimulus package, PEMERKASA package, worth RM20 billion was announced on 17 March 2021. PEMERKASA is focused on curtailing the spread of COVID-19, driving economic recovery, strengthening national competitiveness, ensuring a regional and community inclusion agenda, and transforming the economy. In line with these focus areas, the main initiatives of the PEMERKASA package include additional funds for procurement of vaccines to accelerate the national immunisation programme, additional cash payments to the vulnerable, extension of targeted wage subsidies, grants for SMEs, increase in small-scale infrastructure projects, and fuel subsidies. In the package, an allocation to include measures to extend financing for firms and improve digitisation of the economy was also made.
**PEMERKASA Plus stimulus package**

With the announcement of the implementation of a stricter nationwide MCO to curb the rise in COVID-19 infections, a RM40 billion package was also declared on 31 May 2021 which focused on additional health spending to fight the pandemic, whilst also providing assistance to the people and supporting business continuity.

**National People’s Wellbeing and Economic Recovery Package (PEMULIH)**

In the government’s next step to mitigate the impact of a continued lockdown, the Prime Minister announced RM150 billion in COVID-19 relief spending on 28 June 2021. The PEMULIH package aims to sustain previous aid programmes, support businesses and ramp up vaccinations thereby complementing efforts to put the country back on the recovery path under the National Recovery Plan.

**Recent Developments in the Banking Sector**

**Reference Rate Framework**

The Reference Rate Framework (RRF) was introduced in January 2015 to replace the Base Lending Rate (BLR) with the Base Rate (BR) as the main reference rate for the pricing of new floating-rate retail loans and financing facilities. On 11 August 2021, BNM issued a revised RRF. The revised RRF introduces an industry-wide, standardised benchmark rate, known as the Standardised Base Rate (SBR), to be used by all financial service providers as the reference rate for the pricing of retail loans/financing facilities effective from 1 August 2022. According to the RRF, the SBR will be linked solely to the Overnight Policy Rate (OPR), as set out in the Monetary Policy Statement of the Monetary Policy Committee of BNM. The RRF permits financial service providers to add a spread over and on top of the SBR to arrive at the lending rate to be charged to their individual customers.

**Cross Border QR Payment Linkage**

On 18 June 2021, BNM and the Bank of Thailand launched a cross-border QR payment linkage between Malaysia and Thailand. This linkage would enable consumers and merchants in both countries to make and receive instant cross-border QR code payments. This launch marks the completion of the first of three phases.

With the completion of phase one, users in Thailand are able to use their mobile payment applications to scan DuitNow QR codes, which are Malaysia’s national QR code solution, to make payments to merchants in Malaysia including for online cross-border e-commerce transactions. Under phase two, which is expected to go live in the last quarter of 2021, users in Malaysia will be able to use their mobile payment applications to make payment to merchants in Thailand using Thai QR codes.
The third and final phase of the linkage will be expanded to include cross-border remittance thereby allowing users in both countries to make real-time fund transfers conveniently by referencing the mobile phone number of the recipient. The final phase is expected to be completed by end 2022.

**BNM’s Licensing Framework for Digital Banks**

Following the release of the BNM Licensing Framework for Digital Banks on 31 December 2020, interested parties were invited to submit their applications for a digital bank license under the Financial Services Act 2013 and the Islamic Financial Services Act 2013 by 30 June 2021. A total of 29 applications were received from a diverse range of parties, including banks, industry conglomerates, technology firms, e-commerce operators, FinTech players, cooperatives and state governments. BNM is expected to issue up to five licences, and successful applicants will be notified in the first quarter of 2022.

**Sustainability**

On 30 April 2021, BNM issued the Climate Change and Principle-based Taxonomy (CCPT). The CCPT aims to (a) provide an overview of climate change and its impact on businesses and households as well as the broader economy; (b) introduce a principle-based taxonomy for financial institutions to assess and categorise economic activities according to the extent to which the activities meet climate objectives and promote the transition to a low-carbon economy; and (c) facilitate standardised classification and reporting of climate-related exposures to support risk assessments at the institution and systemic levels, strengthen accountability and market transparency, and encourage financial flows towards supporting climate objectives.

**Foreign Exchange Policy**

BNM continues to maintain a liberal foreign exchange policy (FEP) and is committed in ensuring that the FEP continues to support the competitiveness of the Malaysian economy by facilitating a more conducive environment for domestic and cross-border real economic activities. The FEP is part of BNM’s broad prudential toolkit to maintain monetary and financial stability. In April 2021, BNM issued updates to the FEP in relation to export of goods by residents and payment in foreign currency by residents. More information regarding the latest FEPs can be obtained from BNM’s website, [https://www.bnm.gov.my/fep](https://www.bnm.gov.my/fep).

**Recovery Planning**

BNM, in collaboration with Perbadanan Insurans Deposit Malaysia (PIDM), established a policy framework to implement recovery and resolution planning (RRP) for financial institutions in Malaysia, in line with the Financial Stability Board’s Key Attributes of Effective Resolution Regimes for Financial Institutions (“Key Attributes”). The RRP framework, issued on 28 July 2021, seeks to put in place an effective and efficient process to enhance supervisability, recoverability and resolvability of financial institutions, by incorporating essential elements of Key Attribute 11
of the Key Attributes into the domestic regulatory, supervisory and resolution regimes. Under the RRP framework, each financial institution is required to identify and plan for the execution of a suite of recovery options to restore its long-term viability under a range of idiosyncratic and system-wide stress events.

**Potential future developments in the Malaysian financial industry**

**Agent Banking**

Agent banking is an important delivery channel for financial services, especially to rural and underserved areas in Malaysia. To promote a more inclusive financial sector, BNM issued an exposure draft on the revised framework for agent banking in July 2021. The revised framework aims to:

i. Enhance the role and effectiveness of agent banks in completing the current financial accessibility landscape, in the transition towards digitalisation of financial services;
ii. Ensure sustainability of agent banking services; and
iii. Encourage use of financial services, especially by the rural and underserved segments.

**Alternative Reference Rate (ARR)**

In line with global financial benchmark reforms and the upcoming London Interbank Offered Rate (LIBOR) cessation for most currencies by end-2021, BNM has issued a discussion paper on 19 May 2021 on Alternative Reference Rate (ARR) and Strategic Direction on the Kuala Lumpur Interbank Offered Rate (KLIBOR) and the Kuala Lumpur Islamic Reference Rate (KLIRR) for the Malaysian Financial Markets. This Discussion Paper sets out the proposed design and features pertaining to the development of the proposed transaction-based ARR, potential enhancements to and fallback plans for the KLIBOR as well as a review of the KLIRR.

BNM has appointed the Financial Markets Committee (FMC) which comprises representatives from BNM, Securities Commission Malaysia, financial institutions, insurers, fund managers and corporate treasurers, to oversee the development of a transaction-based ARR and deliberate on the strategic direction for KLIBOR and KLIRR in Malaysia. It proposed for the Malaysian ARR to be based on overnight transactions in the interbank market and will run in parallel to the existing KLIBOR. The availability of both rates provides the market with the flexibility to choose either ARR or KLIBOR as the reference rate for pricing of financial instruments.

**Electronic Money**

Electronic money, or e-money in short, has evolved and grown significantly over the past decade owing to the increased usage of mobile technology such as Quick Response (QR) codes and mobile applications (apps), digitalisation of financial services, and a shift in consumer behaviour which has been accelerated due to the COVID-19 pandemic. According to BNM, e-money represents 33% of total electronic payments (e-payments) in Malaysia, with e-wallet transactions
increasing by 131% to RM0.6 billion in 2020, as compared to RM0.3 billion in 2019. For the past five years, e-money liabilities have also grown significantly from RM0.5 billion to RM1.6 billion. In view of the growing prominence of e-money in the e-payments landscape, enhancements to the e-money regulatory framework are required to ensure that e-money continues to be a safe and reliable payment instrument amidst the increase in functionalities and evolution in the enabling technology.

BNM had accordingly issued a discussion paper on Electronic Money on 11 June 2021 which outlines requirements aimed to (a) ensure the safety and reliability of e-money issued by issuers of e-money; and (b) preserve customers’ and merchants’ confidence in using or accepting e-money for the payment of goods and services.

**Developments in other related agencies in the financial ecosystem**

**Increase in the minimum threshold to commence bankruptcy proceedings**

Pursuant to the Insolvency (Amendment) Act 2020 which was gazetted on 22 October 2020, the minimum threshold for a creditor to commence bankruptcy proceedings against a debtor has been increased from RM50,000 to RM100,000. This change to the minimum threshold will come into effect on 1 September 2021 upon expiration of the temporary increase in the said threshold which was introduced under the Temporary Measures for Reducing The Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 on 31 August 2021.

**Temporary Relief Measure to Listed Issuers**

During the year, Bursa Malaysia Berhad (Bursa Malaysia) and Securities Commission Malaysia (SC) announced the following additional temporary relief measures:

a. an automatic 1-month extension for Main, ACE and LEAP Market listed issuers to issue financial statements. This extension is applicable for all financial statements which are originally due to be issued between February and August 2021; and

b. Main and ACE Market listed issuers with unsatisfactory financial condition and inadequate level of operations during the year 2021 were granted additional time to put in place regularisation plans amid the COVID-19 pandemic.

**Securities Commission Malaysia Grants Regulatory Flexibilities for Market Participants**

The SC also granted further extensions or flexibilities in relation to regulatory deadlines for the submission of various reports by Capital Markets Services Licence Holders and Registered Persons to provide temporary relief as a result of the MCO 3.0. Certain flexibilities have also been granted to issuers in relation to the submission of various documents and data. The SC has waived the minimum required spending for training by management companies and private retirement schemes for the years 2021 and 2022.
**Sustainability**

The Malaysian government priced the world’s first sovereign US Dollar Sustainability Sukuk, with the issuance of USD800 million 10-year Trust Certificates. The initial target size of US$1 billion was increased to US$1.3 billion as oversubscription hit 6.4 times. The 10-year sukuk attracted a diverse group of investors from around the world, including Asia, Europe, Africa and the United States. Proceeds from the sukuk will be used for eligible social and green projects aligned to the United Nations Sustainable Development Goals.

In November 2020, Bursa Malaysia unveiled its inaugural Business Sustainability Programme for Corporate Malaysia which is in line with its call to Malaysian listed companies to integrate sustainability elements into their business strategies. The multi-pronged, comprehensive and progressive Programme consists of a sustainability guide for directors, a knowledge portal, a project matching facility and thought leadership sessions on the subject matter.

At the same time, Bursa Malaysia also launched Powering Business Sustainability - Guide for Director, and introduced the Sustainability Knowledge Portal on the Bursa Malaysia website. The Guide aims to assist directors in understanding the value of good sustainability practices and making this a priority issue in the boardroom agenda whilst the Portal provides directors of listed companies up-to-date and comprehensive information such as global sustainability frameworks, case studies, Government-related tax incentives and benefits as well as discussions on key issues that are relevant to the Malaysian sustainability market.

Complementing these initiatives is a Business Sustainability Projects Matching Facility which will facilitate collaborative partnerships and alliances between listed companies and relevant organisations towards supporting the creation and implementation of comprehensive community, industry and environmental related initiatives.

Malaysia has also updated the targets in its climate change action plan by submitting Nationally Determined Contributions (NDC) to reduce the intensity of unconditional greenhouse gas (GHG) emissions by 45% based on gross domestic product by 2030. As the awareness about the problem continues to grow, more players are participating in the industry and the government has introduced many incentives intended to spur the adoption of renewable energy technology in Malaysia.

Other government incentives include the Green Investment Tax Allowance, which is applicable to companies that use green technology services listed in Malaysian Green Technology and Climate Change Centre (MGTC)’s MyHIJAU directory.
Portugal

The Portuguese economy was severely impacted by the measures enacted to contain and mitigate the COVID-19 pandemic. After seven years of consecutive growth, GDP dropped by 7.6% in 2020. This evolution is mainly explained by the negative contribution of the domestic demand, mostly due to the sharp fall in private consumption. Net external demand also had a more negative contribution than in 2019 due to the more significant reduction in exports, especially in tourism, than in imports. The Portuguese economy experienced the most significant fall in activity during the first lockdown period (Q2) when GDP fell 16.4%

At the end of 2020, the Portuguese banking system comprised 145 institutions, 60 of which were banks (including 31 branches of foreign banks), 82 mutual agricultural credit banks and 3 savings banks. As a result of its ongoing deleveraging process, the Portuguese banking system reduced its weight of total assets to the country’s GDP from 311.1% in 2010 to 204.2% in 2020. The five largest banks accounted for 77% of total assets.

The progress made by the Portuguese banking sector after the great financial crisis proved extremely important in the current context of the pandemic crisis. The sector is better prepared and more resilient, especially in terms of liquidity and solvency, and has been playing a critical role in supporting the economy's financing and liquidity needs.

Solvency has been strongly reinforced: CET1 reached 15.4% in 2020 (versus Core Tier 1 of 7.4% in 2010); liquidity stood at comfortable levels (loan-to deposit ratio of 84.9% versus 158.7% in June 2010; liquidity coverage ratio at 251.6%); non-performing loans (NPL) had an impressive evolution, falling by €36.1 billion since the maximum level attained in June 201 with the NPL ratio decreasing from 17.9% to 4.9% and the NPL coverage ratio increasing from 43.2% to 55%. Nonetheless, on the back of the COVID-19 pandemic context, the profitability of the banking system suffered a significant decrease (RoE of 0,5%) reversing the recovery trend being experienced since 2016.

Legislative and Regulatory Framework

The following national initiatives were passed/implemented:

Regime of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades Financeiras - RGICSF)\(^9\).

- **Law no. 25/2020, of July 7**, adapted the sanctioning frameworks foreseen in the legal regimes applicable to investment fund management companies and securitization fund management companies, amending the Regime of Collective Investment Organisations, the Regime of Venture Capital, Social Entrepreneurship and Specialized Investment, the Regime of Securitization of Credits and the Securities Code.

- **Decree-Law no. 63/2020, of September 7**, regulated the activity and operation of the National Promotional Bank (Banco Português de Fomento, S.A.).

- **Decree-Law no. 58/2020, of August 25**, introduced amendments to the Securities Code. It establishes that companies issuing shares admitted to trading on a regulated market shall remunerate the directors and supervisory bodies in accordance with a policy of remuneration, approved every four years by the shareholders.

- **Decree-Law no. 106/2020, of December 23**, approved the transitional regime applicable to the provision of financial services by United Kingdom based entities.

- **Law no. 50/2021, of July 30**, extended bank moratoria, amending Decree-Law no. 10-J/2020, of March 26, although its production of effects was made dependent on the reactivation of the EBA Guidelines on legislative and non-legislative loan repayments moratoria applied in light of the COVID-19 pandemic.

---

\(^9\) The RGICSF (approved by Decree Law 389/92, dated December 31, as amended from time to time) is expected to be superseded, with the entry into force of the Banking Activity Code (Código da Atividade Bancária - “CAB”). Banco de Portugal launched a public consultation regarding the CAB preliminary draft, which is considered the major reform of the Legal Framework of Credit Institutions and Financial Companies. Among the objectives of the preliminary project are: (i) the consolidation of separate regimes, (ii) the response to regulatory needs, taking into account accumulated supervisory experience, (iii) to consolidate the conclusions from the White Paper on Regulation and Supervision of the Financial System, (iv) to absorb the experiences of parliamentary committees of inquiry in recent years on banking cases and also transpose European directives (Banking Package: CRD V & BRRD II and part of the Corporate Directive on Investment (IFD)).
Decree-Law No 63/2021, of July 28, created the Companies Capitalisation Fund, a measure adopted under the Portuguese Recovery and Resilience Plan.

In the field of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CTF), the following national initiatives were passed/implemented:


- **Law no. 55/2020, of August 27**, defined the objectives, priorities and criminal policy guidelines for the 2020-2022 biennium, in compliance with Law no. 17/2006, of 23 May, which approves the Criminal Policy Framework Law.

- **Bank of Portugal Instruction no. 2/2021, of February 26**, defined low and high risk factors for money laundering and terrorist financing and specific simplified or enhanced identification and due diligence measures.

The following regulatory instruments were also enacted:

- **By the Banco de Portugal (BdP):**

  - **Notice no. 3/2020**regulating the organizational culture, internal governance, system of internal control and remuneration policies and practices of the institutions to which it applies. It is supplemented by Instruction no. 18/2020. This Notice aims to consolidate in one single instrument the regulatory provisions regarding institutions’ internal control and governance, incorporating EBA guidelines on internal governance, EBA guidelines on outsourcing arrangements and EBA guidelines regarding sound remuneration policies.

  - **Notice no. 3/2021** – virtual assets services providers (VASPs) *authorisation and registration*.

  - **Notice no. 4/2021** – payments services providers and electronic money institution authorisation and registration.

  - **Notice no. 4/2021** - bank branches specific requirements.
• **Notice no. 5/2021** – reporting obligations for supervisory action, statistical analysis and macro-prudential risk assessment.

• **Circular Letter no. CC/2020/00000072** recommended that, until September 30, 2021, less significant institutions and investment firms refrain from or limit dividend distributions or repurchases of common shares that may affect their own funds, and should retain their capital to maintain their capacity to finance the economy and absorb potential losses. These recommendations are in line with the approach defined by the European Central Bank for significant institutions in the context of the Single Supervisory Mechanism.

• **By the Portuguese Securities Commission (CMVM):**
  • **CMVM Regulation no. 9/2020** – internal govern self-evaluation obligations.
  
  • **CMVM Regulation no. 8/2020** – disclosure obligations regarding investment services costs and charges.
  
  • **CMVM Regulation no. 7/2020** – complaints handling reporting.
  
  • **Guidelines of December 2020** – suitability assessment for holders of qualifying holdings.
Romania

During the period under review, the following developments were recorded in the field of prudential regulation and anti-money laundering legislation:

Recent developments

Concerning anti-money laundering legislation, on July 2020, the Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU was transposed into the national legislation by the Government Emergency Ordinance no. 111/2020 on amending and completing Law no. 129/2019 on the prevention and combating of money laundering and terrorism financing, as well as for amending and supplementing certain normative acts, on completing art. 218 of Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, on amending and completing Law no. 207/2015 on the Tax Procedure Code, and also for completing art. 12 para. (5) of Law no. 237/2015 on authorisation and supervision of the insurance and reinsurance activity. NBR participated in the elaboration of the legislative project, according to its legal competences, in collaboration with the National Office for Prevention and Control of Money Laundering – the national coordinator of the Directive’s transposition and other national authorities.

Measures adopted by the NBR in response to the effects of the COVID-19 pandemic:

As a result of the effects of the COVID-19 pandemic in the financial-banking field, the National Bank of Romania issued, on March 24, 2020, the Press Release of the Supervisory Committee of the National Bank of Romania, clarifying the way in which Romanian banks and non-banking financial institutions have to apply the regulations in force in the context of COVID 19 pandemic, regarding:

• credit risk: clarifying that deferred payments due to the situation generated by COVID-19 should not be viewed as a financial difficulty of the borrower, meaning that the loan should not be reclassified and provisions should not be made in this context;

• liquidity risk: granting banks permission not to meet the minimum level of the liquidity indicator, in order to use those reserves to contribute to the proper functioning of the banking sector and to help banks ensure sufficient liquidity to companies and population;

• capital buffers: granting banks permission to operate temporarily (until further notice) under the previously constituted capital buffers, while maintaining compliance with the legal requirements for such flexibilities.
In line with the communiqué of March 24, 2020, the National Bank of Romania informed the Romanian Association of Banks and the Council of Romanian Banking Employers about the measures taken to counteract, to the greatest extent possible, the negative effects generated by the COVID-19 pandemic.

Romania aligned with the European recommendations of EBA in taking prudential measures to mitigate the risks arising from the COVID-19 pandemic. In this respect, the following NBR Instructions have been issued:

NBR Instructions from 22.06.2020 regarding legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis, as further amended by NBR Instructions from 03.08.2020 and by NBR Instructions from 15.01.2021, issued in order to implement EBA/GL/2020/02 on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis, as further amended by EBA/GL/2020/08 and EBA/GL/2020/15.

NBR Instructions from 03.08.2020 on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis issued in order to implement EBA/GL/2020/07 on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis.

NBR Instructions from 20.10.2020 on supervisory reporting and disclosure requirements in compliance with the CRR ‘quick fix’ in response to the COVID-19 pandemic issued in order to implement EBA/GL/2020/11 on supervisory reporting and disclosure requirements in compliance with the CRR ‘quick fix’ in response to the COVID-19 pandemic.

In December 2020, the NBR issued:

1. Regulation No. 11/2020 amending and supplementing NBR Regulation No. 5/2013 on prudential requirements for credit institutions, as subsequently amended and supplemented, in areas such as internal governance, assessment of the suitability of members of the management body and key function holders, risk management, internal capital and liquidity adequacy assessment process (ICAAP/ILAAP), management of interest rate risk arising from non-trading book activities.

The revision of Regulation No.5/2013 took into account:

- the EBA guidelines issued in the above-mentioned areas, such as EBA guidelines on internal governance (EBA/GL/2017/11), Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2017/12), EBA Guidelines on credit institutions’ credit risk management practices and accounting for expected credit losses (EBA/GL/2017/06), EBA guidelines on the management of interest rate risk arising from non-trading book activities (EBA/GL/2018/02) and EBA
guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) (EBA/GL/2014/13);

- the recommendations made by the International Monetary Fund and the World Bank as a result of Financial Sector Assessment Program in Romania (2017 – 2018).

2. Regulation No.12/2020 on authorisation of credit institutions and changes in the situation of credit institutions in areas such as licensing, changes in the situation of credit institutions, mergers/divisions, licensing of the bridge - credit institution, which was mainly determined by:

- the development of EBA’s draft regulatory and implementing technical standards on the authorization of credit institutions;
- of the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01);
- the recommendations made by the International Monetary Fund and the World Bank as a result of Financial Sector Assessment Program in Romania (2017 – 2018).

3. Order No. 5/2020 regarding the O-SII buffer, according to which, starting with the 1st of January 2021, credit institutions authorized in Romania and identified as other systemically important institutions (O-SIIs) have to maintain an O-SII buffer, the level of which is foreseen in the Order and is determined on the basis of the total exposure amount, calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013.

In order to ensure the harmonization of national legislation with guidelines and recommendations issued by European Banking Authority, the National Bank of Romania is constantly updating the prudential regulatory framework. Areas in which the EBA guidelines and recommendations have been implemented into Romanian regulatory framework refer to equivalence of the confidentiality regime, legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis, harmonized definitions and templates for funding plans of credit institutions, treatment of structural FX positions, COVID-19 measures reporting and disclosure in compliance with CRR „quick fix”, transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds, loan origination and monitoring, management of information and communication technology (ICT) and security risks, credit risk management practices and accounting for expected credit losses, internal governance, assessment of the suitability of members of the management body and key function holders, determining the weighted average maturity of a tranche in securitization transactions.

firms and Directive 98/26/EC in the national legislation, the National Bank of Romania elaborated the text proposals of the draft Law on amending and supplementing the Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, approved with amendments and supplements by Law no.227/2007, as subsequently amended and supplemented and the text proposals of the draft Law on amending and supplementing Law no.312/2015 on the recovery and resolution of credit institutions and investment firms, as well as for amending and supplementing of some regulations in the financial field.

The text proposals of the draft laws ensuring the transposition of Directive (EU) 2019/878 and Directive (EU) 2019/879 in the national legislation have been submitted to the Ministry of Finance in July 2020. For the current stage, the inter-institutional approval procedure is carried out at the level of Ministry of Finance. The Government, as a legislative initiator, will submit the draft laws to the Parliament for approval at the next stage.

The technical provisions of Directive (EU) 2019/878 shall be transposed by amending the regulations issued by the NBR in the field of authorisation of credit institutions as well as in the field of prudential requirements, which are finalised at the NBR level. Those regulations shall be adopted and published in the Official Gazette of Romania after adopting the law amending GEO No.99/2006.


The text proposal of the draft law ensuring the transposition of Directive (EU) 2019/2162 in the national legislation has been submitted to the Ministry of Finance in March 2021, in order for the inter-institutional approval procedure to be carried out at the level of Ministry of Finance. The Government, as a legislative initiator, will submit the draft law to the Parliament for approval at the next stage.

The technical provisions of Directive (EU) 2019/2162 shall be transposed by issuing an NBR regulation on covered bonds issuance, which will replace the existing NBR regulation applicable in this field. The regulation shall be adopted and published in the Official Gazette of Romania after adopting the draft law ensuring the transposition of Directive (EU) 2019/2162.

institutions, such as the definition of the notion of credit institution, in the sense that this notion means either a credit institution carrying out banking activities or a large investment firm converted in a credit institution, the GEO No.99/2006 will be amended accordingly. This new category of credit institutions (large investment firms) will be subject to the authorisation, supervision and regulation of the Financial Supervisory Authority.

The text proposals of the draft law ensuring the transposition of Directive (EU) 2019/2034 into the national legislation were elaborated by the FSA and by the NBR according to specific competencies and have been submitted to the Ministry of Finance and is currently in the inter-institutional approval procedure.

Given the NCMO Recommendation No. R/5/2021 for the implementation of the ESRB/2020/12 Recommendation on identifying legal entities, by which the National Committee for Macroprudential Oversight (NCMO) recommends NBR to require or, where applicable, continue to require, all legal entities involved in financial transactions under its supervisory remit to have an LEI code, to the extent permitted by the law and paying due regard to the principle of proportionality, NBR released on 30th of August 2021 a Communication recommending credit institutions, electronic money institutions, payment institutions and non-bank financial institutions to have an LEI code. For the purposes of the NCMO Recommendation no. R/5/2021, an LEI code refers to the legal entity identifier and means a 20-character reference code, according to the ISO standard 17442 developed by the International Organization for Standardization. The LEI code allows for the unique identification of entities that engage in financial transactions and provides access to information about their ownership structure.

### Ongoing Financial Regulatory Reform Efforts

In the area of banking prudential regulation, NBR is in the process of amending NBR Regulation No. 5/2013 on prudential requirements for credit institutions, as subsequently amended and supplemented, in order:

- to incorporate the overarching requirements provided by European Banking Authority Guidelines on loan origination and monitoring, the provisions of the EBA Guidelines on outsourcing arrangements and the provisions of the EBA Guidelines on institutions’ stress testing and
- to amend the provisions regarding the assigning of the risk weights to specialised lending exposures according with the requirements of the Regulation (EU) 2021/598 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for assigning risk weights to specialised lending exposures.
- to incorporate some provisions dedicated to stress testing on environmental, social or governance risks (ESG risks), taking into account some general principles presented on

---

10 NBR Communication regarding the Recommendation no. R/5/2021 of the National Committee for Macroprudential Oversight on the implementation of the ESRB/2020/12 Recommendation on identifying legal entities.
the materials issued and published in this field at EU level (*EBA Report on management and supervision of ESG risks for credit institutions and investment firms* and *ECB Guide on Climate related and environmental risks*), in order to meet the requirements of the *Recommendation No. R/6/2021 on supporting green finance* issued by the NCMO and adopted on June 3, 2021.

As regards the liquidity framework for banks, NBR will repeal the national regulations on liquidity, as a consequence of fully entering into force of the European liquidity framework (CRRII).

In the context of *NCMO Recommendation No. R/5/2021 for the implementation of the ESRB/2020/12 Recommendation on identifying legal entities*, NBR will amend the regulations on financial reporting submitted to the central bank and the information disclosed about the institutions within its competence, by requiring to include LEI code (if available).

Given the NCMO *Recommendation No. R/6/2021 on supporting green finance*, by which the NCMO recommends to the NBR to communicate to the entities in its area of competence some recommendations on a prudent approach to climate risk, NBR will take all necessary measures (i) to recommend institutions under its supervisory remit to review the 5 areas mentioned in the recommendation so that they also include climate risks and (ii) for possible amendments to regulations or implementation of other measures, as appropriate.

**Developments in the Accounting Regulation Field**

Following the amendments brought by the EBA to the FINREP consolidated reporting framework during June 2020, as well as to ensure the comparability of the financial and accounting statistical information reported by the Romanian branches of credit institutions having their headquarters in other Member States with the similar information reported by the credit institutions, the National Bank of Romania issued the NBR Order no.8/2020 amending and supplementing the NBR Order no.9/2017 and the NBR Order no.10/2017. The main aspects envisaged by the order are:

- ensuring the correlation of FINREP individual reporting framework with FINREP consolidated reporting framework, as follows:
  - revising the reporting requirements regarding the definitions of non-performing and forborne exposures, taking into account the fact that these definitions were

---

11 The recommendations shall cover at least the following areas: (i) governance, (ii) strategy, (iii) risk management, (iv) scenario analysis and stress testing and (v) transparency.
12 Amendments approved at EU level through Regulation (EU) 2021/451.
13 NBR Order no.9/2017 for the approval of the Methodological rules regarding the preparation of FINREP individual financial statements, according to International Financial Reporting Standards, applicable to credit institutions for prudential supervision purposes, as subsequently amended and supplemented.
14 NBR Order no.10/2017 approving the Methodological rules regarding the preparation of the periodic reports containing financial and accounting statistical information applicable to Romanian branches of credit institutions having their headquarters in other Member States, as subsequently amended and supplemented.
included in CRR as the Regulation (EU) 2019/630 was issued, in the context of inclusion of prudential protection mechanisms of non-performing exposures (“NPE backstop”);
- changing the method of reporting of purchased or originated credit-impaired financial assets (POCI), by inserting new rows/columns in some FINREP forms, in order to present the financial assets and off-balance-sheet exposures that are purchased or originated credit – impaired separately from the financial assets/off-balance-sheet exposures classified by impairment stages;
- modifying some FINREP forms and/or the related reporting instructions following the EBA publication of the answers for a batch of Reporting Q&A or in order to clarify some current instructions.

- updating the reporting framework regarding financial and accounting statistical information, applicable to the Romanian branches of credit institutions having their headquarters in other Member States, according to the amendments brought to the FINREP individual reporting framework and considering the needs for including some additional forms in order to identify the critical functions on economy level and the relevant credit institution related to these.
- modifying the mapping of the chart of accounts to the individual FINREP reporting forms/Romanian branches of credit institutions forms, considering the amendments brought to the reporting forms, as well as amending the correlations within and between the individual FINREP forms/ Romanian branches of credit institutions forms.

To ensure the comparability of the information provided at the national level by semi-annual and annual accounting reports, as required by the Ministry of Finance, requirements applicable to the entities under the National Bank of Romania accounting regulation scope were updated as follows:

- As concerns the semi-annual accounting report, the National Bank of Romania issued for the reporting reference date 30.06.2021, the NBR Order no.4/2021 (issued in August 2021) amending and supplementing the NBR Order no.10/2012\(^\text{15}\) and for the reporting reference date 30.06.2020, the NBR Order no.4/2020 (issued in August 2020) amending and supplementing the NBR Order no.10/2012:
  - The main aspects of the NBR Order no.4/2021 reflects the updating of the template code 30 - "Informative data" for credit institution and other entities under the National Bank of Romania accounting regulation scope, follow to the publication in the Official Journal of the Order of Minister of Finance no.58/2021\(^\text{16}\).

\(^{15}\) NBR Order no.10/2012 for the approval of the Semi-annually accounting reporting system, applicable to the entities under the National Bank of Romania accounting regulation scope.

\(^{16}\) Order of the Minister of Finance no.58/2021 regarding the main aspects related to the preparation and submission of the annual financial statements and accounting reports of the economic operators to the territorial units of the Ministry of Finance.
The main aspects of the NBR Order no.4/2020 are due to the changes of FINREP individual reporting framework brought through NBR Order no. 12/2019\(^\text{17}\) (applicable starting with 30.06.2020 reporting date) by updating the templates applicable to credit institutions in respect of the "Statement of Assets, Liabilities and Equity" and "Profit and Loss Account".

As concerns the annual accounting report, the National Bank of Romania issued the NBR Order no.3/2021 amending and supplementing the NBR Order no.2/2020\(^\text{18}\), following the changes of FINREP individual reporting framework brought through NBR Order no. 12/2019 (applicable starting with 30.06.2020 reporting date) and considering also the amendments provided by the Order of the Minister of Finance no.58/2021, in order to ensure the correlation of the annual reporting requirements for credit institution with the ones applicable to the economic operators. The main aspects of the Order envisaged thereby are updating the template of the annual accounting reporting forms, the correspondence with the chart of accounts of some positions from the annual accounting reporting forms and the correlation within the annual accounting forms, according to the amendments brought to the reporting templates.

\(^{17}\) NBR Order no. 12/2019 amending and supplementing the NBR Order no. 9/2017 approving the Methodological rules regarding the preparation of FINREP individual financial statements, according to IFRS, applicable to the credit institutions for prudential supervision purposes, and the NBR Order no. 10/2017 approving the Methodological rules regarding the preparation of the periodic reports containing financial and accounting statistical information applicable to Romania branches of credit institutions having their headquarters in other Member States.

\(^{18}\) NBR Order no.2/2020 for the approval of the Methodological rules regarding the preparation of the annual accounting reporting for Ministry of Public Finance information needs, applicable to the credit institutions.
Singapore

Key Developments in the Regulation and Supervision of Banks

1. MAS Notice 656 on Exposure to Single Counterparty Groups for Banks Incorporated in Singapore

On 14 August 2019, MAS issued MAS Notice 656, which revises the current regulatory framework for exposures to single counterparty groups for banks incorporated in Singapore. The revised regulatory framework is consistent with the large exposures framework under the Basel Committee on Banking Supervision, and includes:

- Tightening the large exposures limit to be based on 25% of Tier 1 capital;
- Enhancing criteria for aggregating and disaggregating exposures to single counterparty groups;
- Revising the scope of exempted exposures; and
- Aligning exposure measurement approaches to the capital framework.

The implementation date of MAS Notice 656 has been delayed from 1 October 2020 to 1 July 2021 to allow banks to prioritise resources towards dealing with issues related to the COVID-19 pandemic.

2. New Digital Bank Licenses

On 28 June 2019, MAS announced it will issue up to five new digital bank licences. These new digital banks are in addition to any digital-only banks that Singapore-incorporated banking groups may already establish as qualifying subsidiaries. The five digital bank licences comprise:

- Up to 2 digital full bank licences, that will allow licencees to provide a wide range of financial services and take deposits from retail customers; and
- Up to 3 digital wholesale bank licences, that will allow licencees to serve Small Medium Enterprises and other non-retail segments.

The application window for the digital bank licences has closed on 31 December 2019.

Applicants must first meet MAS’ eligibility criteria to be considered. Eligible applicants will then be assessed against MAS’ assessment criteria. The eligibility and assessment criteria can be found on MAS’ website (link).

On 18 June 2020, MAS announced that 14 of the 21 digital bank applications received had met the eligibility criteria required. These eligible applicants, which comprised five digital full bank applicants and nine digital wholesale bank applicants, were to progress to the next stage of assessment. The expected timeline for the award of the digital bank licences is by end-2020.
3. Singapore Makes Significant Progress in Preparing for the SOR to SORA Transition

Since its formation in August 2019, the Steering Committee for SOR Transition to SORA\(^{19}\) ("SC-STS") has made significant progress in front-loading the key technical preparation work required to support benchmark transition as SOR would be discontinued in tandem with LIBOR cessation. This includes establishing key market conventions and infrastructure, enhancing industry and system readiness, and starting early public education and communication efforts.

- Majority of SC-STS member banks are ready to trade SORA derivatives, and good progress has been achieved for bonds and perpetual securities as well as business and syndicated loans. Communication and public education have intensified over the past months.
- This will help lay important groundwork to facilitate banks to further drive early adoption and pilot new SORA products in second half of 2020, with the goal of a broader-base transition starting in 2021.

In addition, MAS announced several key initiatives to support SORA adoption:

- Issuance of SORA-based floating rate notes (MAS FRN) on a monthly basis, starting from 21 August 2020. This is intended to facilitate the adoption of SORA as a floating rate benchmark, provide a pricing reference for SORA cash products, and spur hedging activities through the SORA derivatives market.
- Enhancing transparency and data availability on SORA. MAS has published the key features and calculation methodology of SORA. MAS will also publish, on a daily basis, key statistics including SORA, the Compounded SORA rates for 1-month, 3-month and 6-month tenors, and a SORA Index.
- MAS has prescribed SORA as a financial benchmark under the Securities and Futures Act (SFA). This will ensure that regulatory and enforcement powers, including criminal and civil actions, can be taken against any market misconduct related to SORA.
- Finally, MAS in our capacity as the administrator of SORA has issued a Statement of Compliance with the IOSCO Principles for Financial Benchmarks ("IOSCO Principles") for SORA. This follows recent enhancements to the methodology of SORA to broaden its representativeness.

4. Banking (Amendment) Act 2020

The Banking (Amendment) Act 2020 ("the Act") was passed by Parliament on 6 January 2020 and assented to by the President on 29 January 2020. The key amendments in the Act are highlighted as follows:

- Remove the Domestic Banking Unit ("DBU") - Asian Currency Unit ("ACU") divide.

---

\(^{19}\) SOR is the Singapore Dollar (SGD) Swap Offer Rate published by the ABS Benchmarks Administration Co Pte Ltd. SORA is the Singapore Overnight Rate Average published by MAS, and reflects the volume-weighted average rate of SGD unsecured overnight interbank borrowing transactions in Singapore.
• Rationalise and consolidate the regulation of merchant banks into the Banking Act and subject them to a licensing regime, under which they will be licensed as a class of financial institutions.
• Expand the grounds for MAS to revoke a bank licence to include:
  o Contravention of provisions of the MAS Act, which contains important regulatory requirements such as those relating to anti-money laundering and financing of terrorism;
  o In the case of a foreign-owned bank incorporated in Singapore, when the parent bank’s licence is withdrawn by the parent supervisory authority;
  o When MAS assesses that it is in the public interest to do so.
• Provide MAS with new powers to enhance its supervisory oversight of banks’ outsourcing arrangements.

The amendments will commence on a date or dates to be appointed.

5. MAS Notice 643 and 643A on Final Requirements for Transactions with Related Parties

On 12 December 2019, MAS issued a new set of Notices (Notice 643 and 643A) which sets out the requirements for transactions with related parties. The Notices seek to mitigate the risk of abuse arising from conflicts of interest by:
  • Setting out the definition, scope and general principle governing transactions with related parties;
  • Setting out the responsibilities of banks in Singapore in relation to related party transactions; and
  • Requiring banks in Singapore to prepare quarterly statements of their related party transactions for submissions to their board of directors / head office and MAS.

On 2 July 2020, MAS informed all banks of the delay of the effective dates of the Notices from 1 October 2020 to 1 July 2021, in view of feedback that banks were facing difficulties meeting the earlier timeline of 1 October 2020, as significant resources were being prioritised towards dealing with the COVID-19 pandemic.

6. Thematic Inspections on Private Banking Sales and Advisory Practices

On 14 February 2020, MAS published an information paper that highlighted observations from thematic inspections on selected financial institutions (“FIs”) operating in the private banking industry in Singapore. The paper also sets out MAS’ supervisory expectations on sales and advisory practices in the industry. The paper can be found on MAS’ website (link).

The inspections focused on FIs’ governance framework, investment suitability, pricing controls and disclosures, as well as culture and conduct. Overall, FIs have largely adopted the investment suitability and pricing disclosure standards set out in the Private Banking Code of
Conduct (“PB Code”) and Guidance on Private Banking Controls. Some FIs have established good practices with regard to investment suitability and pricing checks that others can emulate. Others have room to improve the rigor of control processes and effectiveness of implementation. Following the inspections, MAS worked with the Private Banking Industry Group (“PBIG”) to enhance the PB Code to reflect the expectations in the paper and to reiterate the high standards of market conduct expected of FIs.

Examples of supervisory expectations highlighted by MAS include:

- Adequate management attention on pricing issues as well as proper governance and controls to prevent overcharging;
- Front office awareness on communicating in a transparent manner and acting in clients’ interests;
- Robust change management and post-implementation reviews, which if not well managed could result in data integrity issues and design flaws that inadvertently lead to overcharging;
- Accountability over pricing issues across the three lines of defence; and
- Explore use of technology and data analytics to automate and process data in a more efficient manner that would reduce errors and ease resource constraints.


On 25 June 2020, MAS issued a consultation paper on its Proposed Guidelines on Environmental Risk Management. The Guidelines aim to enhance financial institutions’ resilience to environmental risk, and strengthen the financial sector’s role in supporting the transition to an environmentally sustainable economy, in Singapore and in the region.

The Guidelines, which were co-created with FIs and industry associations, set out MAS’ supervisory expectations for banks, insurers and asset managers in their governance, risk management and disclosure of environmental risk:

- **Governance** – Boards and senior management of FIs are expected to incorporate environmental considerations into their strategies, business plans, and product offerings, and maintain effective oversight of the management of environmental risk.
- **Risk Management** – FIs should put in place policies and processes to assess, monitor, and manage environmental risk.
- **Disclosure** – FIs should make regular and meaningful disclosure of their environmental risks, so as to enhance market discipline by investors.

---

20 The **PB Code** sets out standards of good practice on competency and market conduct expected of FIs (including their staff) operating in the private banking industry in Singapore.

21 The **Guidance on Private Banking Controls** provides FIs with guidance in the areas of (i) anti-money laundering and countering the financing of terrorism; (ii) fraud risk prevention; and (iii) investment suitability.

22 The **PBIG** is an industry group comprising senior executives of the private banking community in Singapore. It aims to shape the development and foster sustainable growth of private banking in Singapore.
8. MAS Consultation Paper on New Omnibus Act for the Financial Sector

On 21 July 2020, MAS issued a consultation paper to enhance its powers under a new Omnibus Act to, among others (i) issue prohibition orders to keep persons who are not fit and proper from conducting certain activities or holding key roles in financial institutions for a period of time, prohibiting unsuitable individuals from working in the financial industry; (ii) license and regulate, for anti-money laundering and countering the financing of terrorism purposes, any person in Singapore who provides digital token services overseas; (iii) strengthen the framework for technology risk management; and (iv) enhance the effectiveness of dispute resolution. The proposed new Act will consolidate similar provisions for various classes of financial institutions in the MAS Act into a single legislation.

Anti-Money Laundering Developments

1. Key Developments in Sanctions

Developments in the external environment have heightened sanctions risk for financial institutions (“FIs”) in Singapore:

- DPRK sanctions evasion risk remains high
  - DPRK continues to persist in wide-ranging sanctions violation and evasion at an increased scale, scope and sophistication, on its own or with third party facilitators, as highlighted in the March 2020 UN Panel of Experts Report on DPRK. Countries like the US have also expanded the scope of its mandatory sanctions, including secondary sanctions, against DPRK and its supporters. In November 2019 and June 2020, the Singapore authorities convicted individuals and companies for supplying luxury items to the DPRK, an offence under Singapore’s United Nations Act. Two of the individuals had also conspired to deceive a few banks in Singapore into granting S$130 million of trade financing loans to the convicted entity, to generate liquidity for their illicit trade. FIs in Singapore thus have to continue to remain highly vigilant against DPRK sanctions evasion activity.

- Continued focus on the maritime industry for sanctions evasion
  - With toughening measures imposed on the DPRK, the DPRK has looked to other means to evade sanctions. International typologies have indicated that the maritime industry has been exploited by the DPRK, to maintain its access to supply of designated items or to conduct trade to support its proliferation activities. FIs in Singapore continue to remain vigilant to the increasingly sophisticated techniques.

23 Specifically, the UN Panel of Experts Report on DPRK has provided specific typologies involving ship-to-ship transfers, or vessel spoofing, to avoid detection of supply of designated goods to the DPRK. In addition, other authorities such as the US’ Office of Foreign Assets Control (“OFAC”) has also published an advisory in May 2020 on tools to counter current and emerging trends related to illicit shipping and sanctions evasion, which banks have also taken into consideration.
described in these papers, as well as methods described in past papers by MAS\textsuperscript{24}, and incorporate controls as necessary, to mitigate sanctions risks.

2. Risk Priorities and Focus Areas in Anti-Money Laundering and Countering the Financing of Terrorism ("AML/CFT") Supervision

Combating proliferation financing ("PF") and detecting the abuse of legal persons for ML and PF continue to be priority risk areas for MAS.

Following a series of thematic AML/CFT inspections targeted at assessing the effectiveness of banks’ controls in mitigating risks from the misuse of legal persons, MAS published a guidance paper in June 2019 titled "Effective Practices to Detect and Mitigate the Risk from Misuse of Legal Persons". This paper summarises the key findings from the inspections and sets out MAS’ supervisory expectations of sound practices which financial institutions ("FIs") should adopt, to address misuse of legal persons risks and typologies. Illustrative case examples and best practices observed from the inspections were also shared as references for FIs to review against and to enhance their controls as appropriate.

In addition to these two priority areas, MAS will be focusing on banks’ controls relating to CFT, and will be commencing inspections examine the effectiveness of banks’ controls and provide guidance on sound practices that all FIs should adopt. Also, as Singapore is a major trading and commercial hub, banks continue to remain vigilant to trade finance being exploited by criminals to launder funds and for PF. Trade fraud risks are also particularly pertinent, given the global COVID-19 pandemic and its resultant negative impact on global economies.

Furthermore, MAS has highlighted the urgency and importance of augmenting the financial industry’s data analytics capabilities in the area of AML/CFT. The banking industry, in particular, has made good progress on this front over the last two years, by increasingly integrating automation, data analytics and artificial intelligence to enhance the effectiveness and efficiency of their AML/CFT processes and controls (e.g. natural language processing, supervised machine learning techniques and network linked analysis), and to facilitate the detection and disruption of illicit networks.

3. Remaining Resilient to COVID-19 Challenges

The COVID-19 pandemic has presented unprecedented challenges to public health and the global economy, and has led to significant disruptions in work practices, including for financial institutions. Financial institutions ("FIs") have adapted to maintain the effectiveness of AML/CFT controls. In April 2020, MAS provided guidance to clarify that FIs should continue to prioritise higher risk areas; leveraging on the risk-based approach provided for in the relevant

\textsuperscript{24} MAS published a paper, “Sound Practices to Counter Proliferation Financing” in August 2018 which included emerging typologies and case studies, as well as measures FIs could put in place to mitigate risks. The misuse of legal persons, including for proliferation financing purposes, was also covered in a guidance paper MAS had issued in June 2019 – “Effective Practices to Detect and Mitigate the Risk from Misuse of Legal Persons".
MAS AML/CFT Notices and Guidelines. FIs were also encouraged to develop data analytics capabilities, for instance, to facilitate name screening and/or transaction monitoring processes, and leverage technological solutions to apply non-face-to-face measures.

In addition, the disruptions caused by COVID-19 are likely to lead to significant changes in the behaviour of both legitimate actors as well as criminals and terrorists; the latter may seek to exploit weaknesses in AML/CFT systems to carry out financial fraud and exploitation scams. MAS and CAD published a joint alert on 14 April 2020, highlighting key COVID related scams/typologies during this period and reminding banks to stay vigilant to deter and detect such cases.

Such typologies include:
- Frauds/scams related to COVID
- Misdirection of government funds or international financial assistance and increased risk of corruption
- Change in financial behaviour to be considered during transaction monitoring
- Sale of distressed assets (e.g. real estate, troubled businesses and other high-value products)

4. AML/CFT Industry Partnership (“ACIP”)

On September 2019, ACIP organised its first data analytics workshop to complement ongoing initiatives by financial institutions (“FIs”) on the adoption of data analytics methods to enhance AML/CFT effectiveness. Several ACIP Banks shared strides that they had made in deploying data analytics to enhance the effectiveness of their AML/CFT processes and controls at the workshop, and participants gained ideas on how to apply these tools to enhance their own banks’ AML/CFT processes and risk detection frameworks.

To help banks understand how their peers have dealt with common implementation issues, panel discussions were conducted to address two of the key challenges in implementing AML/CFT data analytics, namely, Explainability and Governance. The first panel discussed the importance of explainability in supporting adoption of machine learning models in AML/CFT, as well as a way to tailor the level of explainability for different stakeholders to help them understand, evaluate and approve, and use such machine learning models. The second panel discussion focused on the perceived tension between governance and agility in development, and the ways to address the perception, including calibrating appropriate level of governance at each stage of a model’s development.

ACIP has also published a summary paper titled “Key Takeaways – ACIP Workshop to Promote Data Analytics in AML/CFT” on 13 September 2019 and laid out additional resources that banks can tap on to develop their systems and staff expertise.
Addressing Cybersecurity Threats to Financial Institutions and Building Operational Resilience

Throughout the first half of 2020, financial institutions ("FIs") in Singapore implemented effective safe management measures at their workplaces and business operations. These measures include having FIs’ employees working from home as much as possible, split operations for those who have to work onsite, maintaining a safe distance between individuals, and wearing of surgical masks in the FIs’ premises.

MAS also provided guidance on technology and cyber risk management during the COVID-19 pandemic with specific focus placed on securing the IT infrastructure supporting remote access and telecommuting. MAS also kept the financial industry apprised of new COVID-19 related cyber threats promptly through our surveillance efforts. These include cyber threat actors that were using COVID-19 as part of their social engineering campaigns to trick victims into revealing sensitive information or installing malware on victims’ devices. Examples of such scams include impersonation of public health enforcement officers requesting for personal information, and phishing campaigns using spoofed email addresses of government authorities that claimed to help businesses during the COVID-19 pandemic. More COVID-themed phishing scams are expected as the pandemic continues to generate high level of public interest. FIs continue to heighten their cyber threat monitoring as well as raise cyber vigilance amongst their staff through cyber risk awareness and social engineering testing programmes.

While the COVID-19 pandemic has brought on challenges, FIs in Singapore continue to strengthen their cybersecurity and operational resilience to meet the challenges ahead.

1. MAS Notice on Cyber Hygiene

On 6 August 2019, MAS issued a set of notices that sets out the measures that financial institutions must take to mitigate the growing risk of cyber threats. The Notices on Cyber Hygiene make it mandatory for financial institutions ("FIs") to comply with the following requirements:

- Ensure there is a written set of security standards for every system and ensure that every system conforms to the set of security standards where possible;
- Ensure security patches are applied to address vulnerabilities in every system in a timely manner;
- Implement controls at it network perimeter to restrict unauthorised network traffic;
- Implement measures to mitigate the risk of malware infection;
- Secure administrative accounts to prevent unauthorised access; and
- Implement multi-factor authentication for administrative accounts in respect of certain critical systems as well as accounts on systems used to access customer information through the internet.

The requirements have come into effect on 6 August 2020.
2. **Revisions to Guidelines on Technology Risk and Business Continuity Management**

On 7 March 2019, MAS issued two consultation papers on proposed revisions to technology risk and business continuity management (“BCM”) Guidelines to enhance operational resilience of financial institutions (“FIs”).

- The changes will require FIs to put in place enhanced measures to strengthen operational resilience. These take into account the rapidly changing physical and cyber threat landscape.
- MAS proposes to expand the Technology Risk Management Guidelines to include guidance on effective cyber surveillance, secure software development, adversarial attack simulation\(^{25}\), and management of cyber risks posed by the Internet of Things.
- MAS also proposes to update the BCM Guidelines to raise standards for FIs in the development of business continuity plans that will better account for interdependencies across FIs’ operational units and linkages with external service providers. FIs are encouraged to put in place an independent audit programme to regularly review the effectiveness of their BCM efforts.
- The two Guidelines continue to emphasise the importance of risk culture, and the roles of Board of Directors and senior management in technology risk and business continuity management.

3. **Protecting Critical Information Infrastructure in the Financial Sector**

Following the designation of critical information infrastructure (“CII”) in the financial sector in Q4 2018, the Cybersecurity Agency (“CSA”) has put in place Cybersecurity Code of Practice (“CCoP”) addendum for operational technology systems issued in December 2019.

CSA has further provided supplementary references to augment the requirements set out in the Cybersecurity Act and CCoP, for Critical Information Infrastructure Owners (“CIIOs”). They are:

- Guide to conducting Cybersecurity Risk Assessment for Critical Information Infrastructure in December 2019; and

A sectoral heightened alert plan for the Banking and Finance Sector was released in December 2018. This plan serves to guide CIIOs to put in place additional resources and precautionary measures based on specified cyber threats scenarios.

4. **Cyber Security Advisory Panel (“CSAP”)**

The MAS CSAP was formed in 2017 with the intent to bring together leading cyber security experts and thought leaders from around the world to advise on MAS on strategies to enhance

---

\(^{25}\) Adversarial attack simulation exercise tests an FI’s capability to prevent, detect and respond to threats by simulating perpetrators’ tactics, techniques and procedures to target the people, processes and technology underpinning the FI’s critical business functions or services.
cyber resilience of Singapore’s financial sector. The 3rd meeting of the CSAP was held over 2 days in Singapore from 30 September 2019 to 1 October 2019 with support from the ABS Standing Committee on Cyber Security. Discussions between the CSAP and participating industry representatives included topics on the quantification of cyber risks, artificial intelligence and machine learning in combating cyber threats, and risks arising from the growing adoption of cloud computing.

5. **Exercise Raffles VI**

The MAS and the ABS jointly conducted a cyber-themed business continuity exercise to strengthen the financial sector’s resilience to cyber-attacks and operational disruptions. Codenamed Exercise Raffles, the sixth edition of the exercise was conducted over two days in November 2019.

Exercise Raffles VI ("ERVI") saw over 140 organisations, including banks, insurers, capital market services licensees, financial utility providers, finance companies, industry associations, and the Singapore Exchange, respond to scenarios of cyber-attacks and operational disruptions by activating their business continuity and crisis management plans, and practicing their public communications and coordination. The scenarios included banking and payment service disruptions, trading disorders, data theft and the spreading of rumours and falsehoods on social media.

An important aspect of effective cyber resilience is information sharing among financial institutions and between regulators. ERVI welcomed the participation for the first time in Exercise Raffles of the Financial Services Information Sharing and Analysis Center ("FS-ISAC") and the Hong Kong Monetary Authority ("HKMA"). The exercise was also supported by the Cyber Security Agency of Singapore ("CSA") and financial industry partners that included SWIFT, FIS Global, and Merimen Technologies (Singapore) Pte Ltd.


The CIRR, chaired by MAS’ Deputy Managing Director, Mr Ong Chong Tee, has been working to develop a toolkit of effective practices for both financial institutions ("FIs") and authorities to support them in responding to, and recovering from cyber incidents. The ABS and representatives from FIs had participated in the virtual meetings organised by the CIRR to provide feedback and exchange views on the draft toolkit that was released for public consultation.

The CIRR toolkit will contain a set of effective practices, structured across seven components: (i) Governance; (ii) Preparation; (iii) Analysis; (iv) Mitigation; (v) Restoration; (vi) Improvement; and (vii) Coordination and Communication, and is expected to be released in October 2020.
Significant Market Developments

No major mergers or privatisations were noted amongst banking, securities and insurance companies in Singapore during the period under review.

Key Developments in Payments

1. PayNow and PayNow Corporate

PayNow and PayNow Corporate have both continued to grow significantly in its registered user base and transaction usage. More than 4 million Singapore residents have registered their National Registry Identity Card (“NRIC”) number, Foreign Identification Number (“FIN”) or mobile number for the service. This represents a 45% YoY growth (from July 2019-June 2020) in its user base of individual consumers.

After launching in August 2018, PayNow Corporate now has 245,653 unique entity number (“UEN”) registrations as at June 2020, a 122% YoY growth from June 2019. PayNow Corporate has facilitated S$5.17 billion worth of payment transaction flows during the same one year period.

Just recently in April 2020, ABS has also worked with the MAS and the respective PayNow banks to implement a campaign to significantly increase the adoption of PayNow Corporate by small businesses and deploy physical PayNow SGQR labels at merchant store fronts. This allows small businesses to accept e-payments quickly with low to no cost, while enabling these businesses to better participate in the digital economy.

2. Enabling Direct FAST and PayNow Access for Non-Bank Financial Institutions (“NFIs”)

ABS has played a key role in supporting MAS and other payment service providers to enable NFIs to directly access FAST and PayNow, Singapore’s real-time payments infrastructure and central addressing system. This will enable real-time payments to take place between bank accounts and e-wallets, and across e-wallets, which is a significant milestone to achieve interoperability in our payments ecosystem. The project is expected to complete in end-November 2020, and the first batch of NFIs are expected to go-live as participants of FAST and PayNow in Q1 2021.

3. Payment Services Act (“PS Act”)

On 28 January 2020, the Payment Services Act 2019 (“PS Act”) came into force. The PS Act provides for the regulation of payment service providers and oversight of payment systems. The Payment Systems (Oversight) Act and Money-Changing and Remittance Businesses Act were repealed. The objectives of the PS Act are as follows:
• Introduce a regulatory structure that recognizes the growing convergence across payment activities.
• Expand the regulatory scope of MAS to include more types of payment services, such as digital payment token (“DPT”) services and merchant acquisition.
• Adopt a modular and risk-focused regulatory structure, allowing rules to be tailored to the scope of services being offered.

Regulatory Frameworks, Licence Classes & Key Risk Mitigating Areas

The PS Act introduced 2 regulatory frameworks:
• Designation Regime which allows MAS to designate significant payment systems to ensure the stability of the financial system or for efficiency or competitive reasons.
• Licensing Regime which enables MAS to regulate a wide range of payment services in a manner that matches the scope and scale of services provided by each provider, and that can respond flexibly to market developments.

There are 3 classes of licences that may be issued under the PS Act:
• Money-changing licences which entitle their holders to only carry on a business of providing money-changing services.
• Standard payment institution licences which entitle their holders to carry on a business of providing any combination of the 7 payment services, but below specified transactions flow or e-money float thresholds as set out in the PS Act.
• Major payment institution licences which entitle their holders to carry on a business of providing any combination of the 7 payment services but above specified transactions flow or e-money float thresholds as set out in the PS Act. They will be regulated more comprehensively.

The key risk mitigating measures are:
• User protection: The PS Act will require major payment institutions to safeguard customer monies from loss through the institutions’ insolvency.
• Interoperability: The PS Act gives MAS formal powers to ensure interoperability of payment solutions.
• Technology risk management: The PS Act gives MAS powers to impose technology risk management requirements, including cyber security requirements, on all licensees and operators of designated payment systems. Licensees and operators of designated payment systems are required to comply with cyber hygiene requirements to mitigate the growing risk of cyber threats.
• Anti-Money Laundering/Countering Financing of Terrorist (“AML/CFT”): MAS Notices and Guidelines were issued to DPT service providers and other payment service providers. Payment service providers are required to put in place robust AML/CFT controls to detect and deter the flow of illicit funds through Singapore's financial system.
Enhanced Surveillance and Supervision over DPT Service Providers

MAS has enhanced supervisory and surveillance capabilities to facilitate the pro-active detection of unlicensed DPT activities, and to use “real-time” data gathering to enhance assessment of ML/TF risks for licensed entities. Both in-house and external technologies are utilised to draw insights from new data points, such as transactional information on public blockchains and other sources, to augment traditional sources of information such as statutory returns and suspicious transactions reports.

Proposed Amendments to PS Act

On 23 December 2019, MAS issued a consultation paper proposing further amendments to the PS Act to strengthen and enhance the regulation of DPT service providers (also known as Virtual Asset Service Providers ("VASPs") or virtual currency exchanges/dealers) by expanding the scope of DPT service to mitigate the ML/TF risks posed by other DPT activities and to align Singapore’s regime with the enhanced FATF Standards for VASPs, and include powers in relation to the protection of customer money and assets. In addition, MAS proposed amendments to expand the regulatory scope of cross-border money transfer service to mitigate the ML/TF risks arising from certain business models where entities in Singapore broker remittance transactions between entities in two different countries.

Key proposals include:

- Expanding scope of “DPT service” to regulate entities that conduct safekeeping of transfer of DPTs, provide custodian wallet services for DPTs and/or actively facilitate the exchange of DPTs (without possession of money or DPTs).
- Expand scope of cross-border money transfer service to include brokering of transactions between entities in two different countries, without moneys accepted or received in Singapore by the payment service provider.
- Granting MAS powers to impose, on certain DPT service providers, user protection measures to safekeep customer assets and additional measures to ensure financial stability, safeguard efficacy of monetary policy, the protection of users or consumers or in the interest of the public.
Spain

The following are the main legislative changes during the period under review:

COVID MEASURES

Royal Decree-law 34/2020 on urgent measures to support business solvency and the energy sector, and in relation to tax matters which includes measures relating to foreign investment, finance, insolvency, corporate matters, energy and tax, which extend and develop those already adopted through the Royal Decree-laws previously approved to deal with the economic and social impact of COVID-19.

Financial measures:

This RDL introduces the following changes, within others:

✓ Financing operations for the self-employed and companies that have received public guarantees channelled through the Official Credit Institute.

✓ The deadline initially established for granting the line of investment guarantees created through the Solvency Support Fund for Strategic Companies (31 December 2020) has been extended to 30 June 2021.

✓ Debtors benefiting from a loan with a public guarantee granted under RDL 8/2020 may request the extension of its maturity, which will be accompanied by an extension for the same period of the public guarantee.

✓ Financial institutions must extend the maximum term of the guaranteed loans by up to three additional years for those debtors who meet a series of requirements and request it. Loans of this same line of credit that may be granted in the future will also see the maximum term increased to 8 years.

✓ Customers who meet the requirements established in the RDL may obtain an extension of the grace period on the payment of the principal of the guaranteed loan for a maximum of 12 months, thus establishing a maximum total grace period of 24 months.

Legal persons governed by private law:

✓ Previous RDLs established the possibility that, during 2020, legal entities governed by private law could hold the shareholders’ meetings, as well as other meetings or assemblies, by videoconference or multiple telephone conference (even if this possibility was not included in the by-laws) provided that all those attending had the necessary means, the secretary
recognised their identity and included this information in the minutes, which would be sent immediately to the corresponding email addresses. RDL 34/2020 extends the period of application of this extraordinary rule for limited liability companies (sociedades de responsabilidad limitada) and partnerships limited by shares (sociedad comanditaria por acciones) to which it will continue to apply during 2021.

✔ Likewise, for listed companies, it had been established that, during 2020, the board of directors could, in the call for the general meeting, provide for attendance by electronic means and remote voting, as well as for the meeting being held anywhere in Spain, even if this had not been provided for in the by-laws. RDL 34/2020 provides that any S.A. corporation (whether listed or unlisted) may make use of this possibility during 2021.

Insolvency:

The measures included are a continuation of those adopted, first by Royal Decree-Law 16/2020 and then by Law 3/2020 (now amended), to prevent the declaration of insolvency or the opening of the liquidation phase in respect of companies that could be viable under general market conditions:

✔ the suspension of the duty to file for insolvency proceedings by a debtor in a state of insolvency is extended to 14 March 2021.

✔ up to and including 14 March 2021, the courts shall also not admit applications for voluntary insolvency proceedings that have been filed since 14 March 2020; if the debtor has filed an application for voluntary insolvency proceedings up to and including 14 March 2021, such applications shall be admitted for processing on a preferential basis.

✔ in the case of applications for a declaration of non-compliance with the arrangement submitted up to 31 January 2021, the judge will transfer them to the insolvent party, but will not admit them for processing until three months have elapsed, during which time the insolvent party may submit a proposal for modification of the arrangement, which will be processed in priority to the application for a declaration of non-compliance.

✔ in the case of applications for a declaration of non-compliance with the refinancing agreement submitted up to 31 January 2021, the judge will transfer them to the insolvent party, but will not admit them for processing until one month has elapsed.

Royal Decree Law 37/2020 on urgent measures to deal with situations of social and economic vulnerability in the field of housing and transport.

This RDL introduces stricter obligations for customer services and complaints, with free telephone lines in certain services, including the banking ones. It also establishes sanctions for failure to remove abusive clauses declared as such even within administrative proceedings.
Royal Decree-Law 1/2021, on the protection of consumers and users in situations of social and economic vulnerability, which includes the definition of vulnerable consumers.

- Both eviction procedures due to non-payment and expiry of the term, with rental contracts subject to the Spanish Law (LAU) the tenant can request an extraordinary suspension of the eviction or launch because they are in a situation of economic vulnerability that does not allow them "to find alternative housing for themselves and for the people with whom they live".
- In eviction procedures due to precariousness, that is, in the case of occupation of untitled housing, the judge has the power to agree ex officio to suspend the launch until the end of the state of alert.

Royal Decree-law 2/2021 on the reinforcement and consolidation of social measures to protect employment.

- It extends to the management bodies of associations, non-profit and commercial companies, and the governing council of cooperative companies, the option of holding their meetings by videoconference or by multiple telephone conference, under the same terms as those that provide for the meetings or assemblies of shareholders in RDL 34/2020.
- It adds that the same rule shall apply to the delegated committees and other mandatory or voluntary committees that they may have set up, and that the meetings shall be deemed to be held at the domicile of the legal entity.
- During 2021, even if the company’s bylaws have not so provided, the resolutions of the management bodies of associations, of civil and commercial companies, of the governing council of cooperative societies and of the board of trustees of foundations may be adopted by written vote and without a meeting, provided that the chairman so decides and they must be adopted when so requested by at least two of the members of the body.

Royal Decree Law 3/2021, which adopts measures to reduce the gender gap and other matters in the social security and economic fields.

It includes certain changes to the moratorium regulations on loan repayments for vulnerable individuals, the self-employed, and tourism and transportation companies to mitigate the economic effects of COVID-19. More specifically, it extends the term of the following moratoriums to 9 months: secured loans; unsecured loans and loans associated with transportation activities (previous term: 6 months). RDL 3/2021 also reduces the term of the moratorium for loans associated with tourism activities that used to have a term of 12 months and now can only last up to 9 months.
Royal Decree-law 5/2021, which contains extraordinary measures to support business solvency in response to the COVID-19 pandemic and establishes a series of additional measures to support the solvency of viable companies that face a severe decline in revenue due to the prolonged downturn in certain sectors and regions most affected by COVID-19.

The sustained impact of the pandemic on economic activity has led the Government, on the one hand, to adopt a series of measures aimed at strengthening the liquidity and solvency of companies and, on the other, to extend once again some of the measures on the Administration of Justice area that had been adopted in the framework of other Royal Decree-Laws.

Highlights:

- Enabling the holding of exclusively telematic shareholders' meetings in 2021.
- Restructuring of ICO loans, with three types of measures: lengthening of terms, introduction of grace periods and the conversion of part of the financing into participative loans or even cancellation of part of the debt.
- Further extension of the bankruptcy moratorium until 31 December 2021 and other measures in the field of bankruptcy.

Agreement of the Council of Ministers of May 2021, approving the Code of Best Practice for the negotiation framework for clients with guaranteed financing provided for in Royal Decree-law 5/2021.

One of the measures included in RDL 5/2021 aimed at strengthening the solvency of companies and self-employed persons who, despite having viable businesses, have seen their financial situation deteriorate as a result of COVID-19 is the Code of Best Practice, which entities wishing to cooperate with the State in establishing measures that contribute to the formation of a more resilient business ecosystem and to the economic recovery of the country have signed up to on a voluntary basis.

In particular, the Code is voluntary for those financial institutions that want to link their loan operations guaranteed by the Official Credit Institute (ICO) and restructure the debt they have granted to both companies and professionals. By adhering to it, financial institutions undertake a series of commitments aimed at refinancing the total debt of their customers, including the obligation to maintain working capital lines until December 2022.
PUBLISHED RULES

Act 5/2020, of 15 October, on the Financial Transactions Tax:

The Spanish Financial Transaction Tax (FTT) is an indirect tax which is similar to the one already existing in France. However, the tax rate is 0,2% and there are some differences in the scope of the exemptions.

The Spanish FTT is applicable on the acquisition of shares traded on a regulated market issued by a Spanish company (as well as depositary certificates representing those shares) with a market capitalization over €1,000 million at 1 December of the previous year.

The taxpayer is the acquirer of the securities. The taxable person (which is obliged to file the relevant tax return and pay the FTT due) is the financial entity that intermediates in the operation, irrespective of is tax residence,

This new tax is applicable since the 16th of January 2021.

Act 4/2020, of 15 October, on Digital Service Tax:

The Spanish Digital Services Tax (DST) is an indirect tax levied on the provision of certain digital services involving users located in Spain.

Taxpayers are, in general terms, the legal entities which, irrespective of their tax residence, exceed the following two thresholds:

a) global annual turnover in the previous calendar year exceeded EUR 750 million and
b) Spanish annual revenues from in-scope digital services corresponding to the previous calendar year exceed EUR 3 million. The taxable base is the amount of the income obtained by the taxpayer and the tax rate is 3%. The following digital services are in the scope of the tax:

✓ Online advertising services  
✓ Online intermediation services  
✓ Data transmission services.

However, there are certain digital services that are out of the scope (for example, the provision of digital services when they are carried out between entities that form part of a group with a direct or indirect ownership of 100 per cent).

This new tax is applicable since the 16th of January 2021.

There have been two milestones in the transposition of the DAC 6.

- The first one was the publication of Law 10/2020 of 29 December 2020 which introduced certain provisions of the Directive that required primary legislation status into General Taxation Law 58/2003 of 15 December 2003 (mainly a definition of legal professional privilege and the regime governing infringements and penalties).

- The second one was the publication of Royal Decree 243/2021 of 6 April 2021 which is very much in line with the regulations set out in the Directive.

- Tax-related measures included in the Spanish General Budget Law for 2021

The main objective of the tax-related measures introduced by this Law is to rise tax revenues by increasing the tax burden of high-income individuals and entities.

Regarding individuals, these measures include amongst others, changes to the marginal rate of personal income tax, the special tax regime for inbound assignees, and the net wealth tax.

Regarding corporates, one of the main changes is the amendments to the participation exemption regime for dividends and capital gains.

**Law 7/2020 for the digital transformation of the financial system.**

It articulates a controlled testing environment (better known as a regulatory sandbox), to support projects that use innovative technology in the financial system.

The purpose of the Law is twofold. On the one hand, to facilitate the innovative process in order to improve financing opportunities, ensure the protection of consumers of financial services and guarantee financial stability and market integrity. On the other hand, to provide regulators and supervisors with greater knowledge of the developments and potential effects of digital transformation in the provision of financial services.

**Law 5/2021, of 12 April, which amends the revised text of the Companies Act, (LSC).**

Its purpose is the improvement of corporate governance matters and the functioning of capital markets, and (ii) the transposition into Spanish law of Directive 2017/828, which aims to encourage long-term shareholder engagement in listed companies. Some of the key changes introduced by this Act are: (i) the regime of related-party transactions which has been clarified and structured; (ii) “Say on pay”: some changes have been introduced regarding the remuneration policy for directors, the content of which is now described in detail; consequently, the contents of the annual report on directors’ remuneration have been expanded; (iii) it recognizes the right of listed companies to identify not only their formal shareholders, but also their “ultimate beneficial
owners” and (iv) it incorporates the provisions of SRD II on the transparency policy of institutional investors and asset managers.

Law 7/2021 on climate change and energy transition.

The Act aims to achieve carbon neutrality in Spain before 2050 through net-zero greenhouse gas emissions, and an efficient and renewable energy system. It also seeks to facilitate a just transition to a low-carbon economy and ensure consistency with public and private sector objectives. This law does not affect the regulation of the activity of the entities in the financial sector but imposes new duties in terms of disclosure of information, taking advantage of pre-existing reports, the purpose of which has been broadened (statement of non-financial information, information with prudential relevance, etc.). New obligations are also imposed on national supervisors, (Bank of Spain, National Securities Market Commission and the Directorate General of Insurance and Pension Funds), which will jointly prepare, every two years, a report on the degree of alignment with the climate goals of the Paris Agreement and European Union regulations based on future scenarios and on the assessment of the risk to the Spanish financial system arising from climate change, which will be coordinated within the Macroprudential Authority Financial Stability Board.

Royal Decree-law 7/2021 transposing, among other European directives, Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AML 5th Directive).

The main amendments made to Spanish Law 10/2010 included in this Royal Decree-Law for the transposition of the V Directive are the following:

- The inclusion of new obliged subjects.
- The reinforcement of the system of identification of the beneficial owners of legal entities, for which a single registry system is created.
- The clarification of the information requirements to be provided in relation to the Financial Ownership File (Fichero de Titularidades Financieras), existing in Spain since 2016.
- Persons who perform important public functions in international organizations accredited in Spain are incorporated to the definition of politically exposed persons.
- In business relationships and transactions without physical presence, it will not be mandatory to obtain a copy of the document proving the identity of the client when it has been accredited by means of a qualified electronic signature under the terms regulated in the EIDAS Regulation.
- The data protection regime when complying with due diligence obligations is included.

The transposition by this means has left behind the option of the Draft Law amending Law 10/2010, which was published in Spain on June 2020, with which the V Directive was going to be transposed and which included additional improvements to our system for the prevention of money laundering,
which are not established in the text of Royal Decree-Law 7/2021. The draft Law was not finally approved due to the lack of consensus in the Congress of Deputies due to the political context and the urgency of the deadline for the transposition of the regulation.

Some of the improvements envisaged in the draft law that have been left out by opting to approve a royal decree-law are the inclusion of new obliged entities such as management companies of securitization funds, management companies of banking assets funds, the Real Estate Investment Trusts and participatory financing platforms as well as the approval of a new liability system for external experts and the development of common data storage services between entities.

PUBLIC CONSULTATIONS

_Draft Law on Procedural Efficiency Measures in the Public Justice Service._ This legislative initiative is aimed to promote mediation and other appropriate means of conflict resolution, to restore the parties' negotiating capacity, including for this purpose mediation as a procedural prerequisite. It also incorporates the intention to bring the “witness lawsuit” (pleito testigo) to the civil jurisdiction.

_Draft Law on Organisational Efficiency of the Public Justice Service._ This project envisages the creation of three fundamental figures: the District Courts (Courts of first instance), the Judicial Office and the Justice Offices in the municipality. The County Courts replace the unipersonal structure of the actual courts with a collegiate system of organization. Moreover, the law increases legal certainty and thus the "predictability" of judicial decisions by establishing requirements of common interpretative criteria among the members of the Court when assessing substantially the same cases.

_Draft Law on Digital Efficiency of the Public Justice Service._ This Project seeks to establish the legal bases for the digital transformation of the Administration of Justice, replacing the 2011 regulation, to create a new data-based information architecture and guarantee digital legal certainty in proceedings. To this end, the regulation will include a new legal framework for the electronic processing of judicial proceedings, addressing basic aspects such as the digital signature, telematic trials, the electronic judicial file or the exchange of data in the Administration of Justice. A new regulation on the digital relations of the Administration of Justice with citizens and professional groups will be addressed, including a new data protection regime adapted to the sector.

_Draft Law on Customers services._ With the fundamental objective of improving the provision of this type of services by large companies and thus improving the protection of consumers to guarantee their rights, the banking industry has highlighted the need to verify whether it applies to financial services, since there is a specific regulation applicable to the development of this service related with banking activities.
The so called “Banking package”:

Recovery and resolution of credit institutions:

The plan to transpose the Second Resolution Directive (BRRD II) consists of two pieces of legislation:

- Draft law amending Law 41/1999 on payment and securities settlement systems, the Royal Decree-Law 16/2011, creating the Deposit Guarantee Fund, the Law 11/2015, on the recovery and resolution of credit institutions and investment services companies and the consolidated text of the Securities Market Law approved by Royal Legislative Decree 4/2015.

- Draft Royal Decree amending Royal Decree 2606/1996 on deposit guarantee funds for credit institutions and Royal Decree 1012/2015, which implements Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment services companies.

The resolution regulation looks to ensure the internal absorption of losses (bail-in) and to avoid the bail-out of a bank with public funds (bail-out), while protecting taxpayers as much as possible. To this end, all institutions are obliged to maintain a minimum amount of funds capable of withstanding losses in the event that the institution becomes unviable and must be resolved. The calculation of this minimum requirement applicable to EU credit institutions is aligned with the international standard issued by the Financial Stability Board (FSB) for globally systemic institutions. Likewise, the protection of retail clients in the distribution of financial products susceptible to losses in a resolution process is increased, and bank resolution protocols are clarified to speed up the process, in order to protect financial stability and the deposits. Finally, amendments are introduced to the insolvency procedure for credit institutions to bring it into line with the resolution procedure and minimise the risk of litigation in the event of the resolution of a financial institution.

Capital requirements for credit institutions

With the banking package, the Second Capital Requirements Regulation (CRR2) and the Fifth Capital Requirements Directive (CRD V) were adopted. The plan to transpose the Fifth Capital Requirements Directive (CRD V) consists of 3 legislative acts:


- Draft Royal Decree amending Royal Decree 84/2015, which implements Law 10/2014, on the regulation, supervision and solvency of credit institutions.


The CRD V aims to ensure the solvency of financial institutions and to establish incentives for them not to take excessive risks.
To this end, the remuneration policy of groups of credit institutions is clarified to avoid overlapping sectoral regulations, while ensuring the solvency of the group. It also introduces greater proportionality in the restrictions on variable remuneration. In both cases, however, the supervisor is empowered to maintain restrictions on remuneration policy in certain circumstances. A requirement for institutions to apply a gender-neutral remuneration policy is also introduced as a governance requirement. The draft regulation introduces further prudential enhancements to enable supervisors to improve the monitoring of bank holding company activity, third country groups and branches and the management of interest rate risk.

**BANK OF SPAIN**

*Circular 1/2021 from Bank of Spain, amending Circular 1/2013 on the Central Risk Information (CIRBE) and Circular 5/2012 on transparency of banking services and responsibility in the granting of loans, in order to adapt them to the changes introduced in the regulation by Order ETD/699/2020, of 24 July, on the regulation of revolving credit.* The purpose of the amendment is to enable institutions to take a more robust assessment of their customers’ creditworthiness and to increase the rate alternatives available to institutions when granting loans and as substitutes in such contracts. Thus, the perimeter of institutions reporting to the CIRBE is extended to include payment institutions and electronic money institutions, as well as the information that is returned to institutions (the amount of the accumulated risk of a holder in an institution that is included in the reports is reduced from 9,000 to 1,000 euros).

*Guidelines on the organization and procedures of Customer Services (SAC) in entities supervised by the Bank of Spain.* It aims to provide best practices and, in this regard, it establishes that credit institutions have a duty to detect in an early stage problems in the marketing of products and services, as well as in relations with their customers, for which purpose they must correct the problems identified by the Customer Services. It points out the importance of the functional independence of the SAC with respect to the units responsible for the decisions or acts challenged by clients in order to avoid possible conflicts of interest.

*Public consultation on the Draft Circular of the Bank of Spain on the models of reserved statements on market conduct, transparency and customer protection and the register of complaints.* This Circular shall apply to credit institutions, credit financial institutions, electronic money institutions, payment institutions, accounts information service providers, operators of foreign exchange offices, real estate lenders, property credit intermediaries, and foreign branches operating in Spain of the abovementioned institutions. The main objective of this Circular is to achieve a complete and standardized information framework on conduct that has a greater detail of the information on entities, which will allow a deeper understanding of the business model of institutions, market trends and the main controversies generated in relation to bank customers, with a much greater level of detail than is currently available.
SPANISH NATIONAL SECURITIES MARKET COMMISSION (CNMV)

Circular 2/2020, of 28 October, of the Spanish National Securities Market Commission, on the advertising of investment products and services. The Circular contains rules on the procedures and controls that the entities must have in this area, their possible adherence to self-regulation systems and the content and format of the advertising message. It will also develop, among other aspects, in relation to the CNMV’s actions aimed at obtaining, in certain cases, the cessation or rectification of certain advertising activities.

Circular 1/2020, of 6 October, of the Spanish National Securities Market Commission amending Circular 5/2013, of 12 June, which establishes the templates used for annual corporate governance reports on listed public limited companies, savings banks and other entities that issue securities admitted to trading on official securities markets. This Circular was updated to accommodate its content to the Good Governance Code for listed companies revised in June 2020, and it is currently under a new revision to accommodate it to the Law 5/2021 that modifies the Companies Act (LSC).
Sweden

Trends in Financial Market Developments

Banks’ results and key figures

The description focuses on the four major commercial banks in Sweden. They jointly represent about 70 per cent of the market. These major banks have considerable activities in markets outside Sweden. The text is partly based on the Stability Report from Finansinspektionen (the Swedish FSA).

Market developments

Sweden’s GDP decreased by -2.8% in 2020 compared to an increase of 2.0% in 2019, according to Statistics Sweden. Due to the pandemic there was a sharp drop in household consumption, net exports and investments in Q2 2020. The GDP recovered during the third quarter, but due to the second wave of Covid-19 during the fourth quarter the recovery levelled out. GDP continued to recover during 2021 and increased by 0.8 percent compared to the fourth quarter. Unemployment increased to 8.3% from 6.8% in 2020. The unemployment has continued to increase in 2021 to around 9 percent.

Inflation slowed to 0.5% at year-end compared to 1.8% in 2019. Also, core inflation (Consumer Price Index with fixed interest rate) decreased to 0.5%. The inflation has increased during 2021 and was 1.6 percent in June 2021. The Riksbank’s negative repo rate between 2015 and 2019, ended in the beginning of 2020 when it was raised to 0%. The zero repo rate continued during the whole year and in year 2021.

Government debt as a percentage of GDP grew from 35.0% to 39.9% in 2020, mainly due to government actions to support the economy from the effects of Covid-19. The rise in government debt is equivalent to EUR 28.2 bn in 2020. In comparison the government debt fell by EUR 14.6 bn in 2019.

The Swedish mortgage market

Residential mortgage lending grew by 6.4% in 2020 compared to 5.2% in 2019. The growth rate increased in 2020 after having declined for four years in a row. The growth rate declined slightly in 2021 but still grew by 6.3% in June 2021.

The demand for mortgage loans has continued and although amortisation of existing loans has increased, debt levels are relatively high. Several factors, which have been unchanged for many years, explain this. i) The population is growing due to immigration and relatively high birth rates. ii) Internal migration towards larger cities has driven housing markets in those areas. This in combination with a long period of comparably low housing construction has created a
shortage of housing. iii) Dysfunctional apartment rental markets in growth regions due to rent control leaves few opportunities other than to buy an apartment. To get a rental apartment with a first-hand contract on the regulated rental market often requires many years of queuing. If you move to a city in a growth region in Sweden and need a rental apartment without queuing, you normally have to pay a rent at a cost far higher than rents on the regulated first-hand market. iv) historically low mortgage interest rates.

Mortgage interest rates have been relatively stable for the last five years. The variable (3-month) rate has been between 1.3 and 1.4% during 2020, a similar range to that prevailing from 2015 to 2019. Initial fixed rates, for 1 to 5 years, have ranged from 1.3 and 1.5%, slightly lower than in previous years. Initial fixed rates over 5 years have been stable around 1.5% in 2020, slightly lower than in average during 2019. Interest rates was stable during the first half year of 2021, but longer fixed rates increased somewhat.

Due to the covid-19 outbreak in 2020 a general easing of the amortisation rules was introduced in April 2020, allowing exceptions such as interest only mortgages until August 2021. If the temporary exemption from the amortisation requirements is excluded, the proportion who amortise their mortgages (88%) in 2020 was unchanged compared to 2019. Over a period of several years, amortisation has increased partly due to the stricter amortisation requirement.

The average LTV for new mortgage loans is 66.4% in 2020, which is slightly higher than in 2019.

The credit loss ratio on mortgage loans remained close to zero, due to high credit standards, the social welfare system, and house prices that have been almost continuously increasing for 25 years.

A number of measures have been taken in recent years to counteract high indebtedness. In 2010 Finansinspektionen (the Swedish Financial Supervisory Authority), introduced a mortgage cap, whereby home loans may not exceed 85% of the value of the home. They have also introduced a risk weight floor for Swedish mortgages, for bank capital purposes of currently 25%.

A further measure is the introduction of amortisation requirements. In June 2016 the Finansinspektionen’s regulation on amortisation entered into force, requiring annual amortisation of at least 1-2 percent on mortgages with LTV (loan to value) 50 percent and higher. Stricter amortisation requirements entered into force from March 2018 requiring additional annual amortisation of 1 percent on mortgages with LTI (loan to income) from 450% or higher. Due to the covid-19 outbreak in 2020 a general easing of these rules was introduced in April, allowing exceptions such as interest only mortgages until August 2021.

Finansinspektionen has focussed on commercial real estate in 2019, and at year end they announced additional capital requirements which apply from 2020 through Pillar II-requirements. The risk weight for the new additional capital requirements is 35% for commercial real estate and 25% for commercial residential properties.
Profitability and capital in the Swedish banking sector

The major banks went into the pandemic with significant capital buffers according to Finansinspektionen (Swedish supervisory authority). Last year the banks’ increased their management buffers – the capital banks hold over and above their capital requirements. According to Finansinspektionen that this in part is due to that the authority lowered the countercyclical buffer rate at the beginning of the crisis to free up capital in the banks. In addition, the banks did not issue dividends in 2020 in accordance with the recommendations from the authorities. This resulted to some extent that banks margins increased and that banks kept a strong position to support households and corporates in a recovery phase. Finansinspektionen has announced that they do not intend to extend the current recommendation to be restrictive with dividends and share buy-backs that is in place until September 2021.

The profits of the major banks were weakened at the start of the pandemic, primarily due to increased credit loss provisions according to Finansinspektionen. The drop in profitability in the Nordic banks has been relatively limited compared to the European banking sector as a whole. The major banks on the Swedish market continued to have high operating income, and their profit improved in 2021.

Finansinspektionen writes that the banks have good access to funding on the credit markets at the same time as deposit volumes have increased. Since the start of 2020, the banks’ liquidity buffers have also strengthened. They therefore have good margins that can be used if the situation were to deteriorate.
Switzerland

Introduction

The Swiss economy has withstood the COVID-19 pandemic well to date, as have the 243 banks that were operating in Switzerland at the end of 2020. They have presented solid results. Aggregate net income rose by 5.8% to CHF 69.9 billion. Together with the insurance and re-insurance companies and financial institutions, the banks form the backbone of the Swiss financial centre. Gross value added of the financial centre amounted to CHF 68.1 billion in 2020. That is 9.7% of the country's total GDP.

COVID-19 Measures

During the early phase of measures to deal with the pandemic, the banks in Switzerland ensured that the companies affected were supplied with liquidity by launching and implementing COVID-19 bridging credits quickly. This helped to cushion the economic impact of the restrictions. The banks granted a total of some 139,000 loans under the programme with an overall volume of CHF 17.1 billion. Almost a quarter of Switzerland’s approximately 590,000 SMEs thus took advantage of the programme.

The Swiss SME bridging credit programme was introduced by means of an emergency ordinance in spring 2020 during the first peak phase of the COVID-19 pandemic. In winter 2020, the emergency ordinance was transferred into ordinary law by the National Council and the Council of States (COVID-19-Solidarbürgschaftsgesetz). The duration of the programme was extended, and all other parameters of the original programme were preserved.

Capital and Liquidity Requirements

On 27 March 2020, the Federal Council approved the SNB’s proposal to deactivate the (sectorial) countercyclical capital buffer (CCB). The CCB had been set in 2014 at 2% of the risk-weighted positions secured by residential real estate located in Switzerland in order to curb alleged excessive mortgage lending. Its deactivation was taken as an emergency measure in the context of the COVID-19 pandemic to free up additional capital allowing banks to better meet the credit and liquidity needs of households and businesses. The impact of the CCB deactivation on both the real economy and the mortgage market cannot be assessed individually. However, it is worth noting that the credit market continued to function during the pandemic and that there were no signs of liquidity or credit crunches that could not be mitigated by the COVID-19 credit programme and hardship assistance.

In the field of liquidity regulation, with effect from mid-2021, the Federal Council set into force the net stable funding ratio (NSFR), aiming at ensuring the stability of banks' funding over the long term. In line with the Basel Committee’s requirements, implementation of the NSFR provisions had been due to take effect from 1 January 2018. Owing to delays in implementing
the NSFR in other jurisdictions, the Federal Council had postponed the NSFR implementation in Switzerland.

**Anti-Money Laundering**

Switzerland has a strong anti-money laundering system based on numerous laws (AMLA, AMLO-FINMA, CDB to name a few). In December 2016, the FATF published the fourth country report on the evaluation of Switzerland, in which the FATF acknowledged the generally good quality of the Swiss system for combating money laundering and terrorist financing, but also identified several weaknesses. The report therefore contained a set of recommendations for improving Swiss legislation and its implementation.

As a result, Switzerland is in the middle of a follow-up process, as part of which various adjustments to the Swiss legal situation have been made or are in the process of being implemented. Since last year’s Global Survey, Switzerland has taken the following steps:

- The AMLO-FINMA and the CDB have been revised and entered into force on 1 January 2020. The AMLO-FINMA has specified the requirements for the global monitoring of corresponding risks. This applies to Swiss financial intermediaries with branches or group companies abroad. The necessary risk management measures have also been specified if domiciliary companies or complex structures are used or there are links to high-risk countries. In addition, FINMA and the CDB have lowered the threshold for identification measures for cash transactions to the FATF level of CHF 15,000.
- The AMLA has been revised. After many discussions, especially about possible (and in the end rejected) new duties for lawyers and notaries, the Swiss Parliament has passed the revision in March 2021. Entry into force, including implementing regulations, is expected in mid-2022. The most important changes concern the new obligation to verify the information on the beneficial owner and to periodically review client profiles if they are still up to date. In addition, the obligation of financial intermediaries to report suspicious activities to the Money Laundering Reporting Office (MROS) has been clarified by defining the term “reasonable grounds to suspect” in the revised AMLA.

**Financial Market Law**

Over the last few years Switzerland has been updating its financial market architecture. As part of this large-scale legislative effort, almost all the elements relating to modern financial market legislation have been revised or newly drafted from scratch. The final building block was the introduction of the new Financial Services Act (FinSA) and the new Financial Institutions Act (FinIA). The FinSA and FinIA create uniform competitive conditions for financial intermediaries and improve client protection. The FinSA therefore introduces standardized rules of conduct and distribution rules for all financial services providers and establishes a general securities prospectus requirement. Under the FinIA, independent asset managers will come under the remit of newly created supervisory organizations, which will in turn report to FINMA – with
those adjustments, the authorization rules for financial service providers are getting harmonized. Both the FinSA and FinIA came into force on 1 January 2020 with transitional periods of two years for most duties.

**Access to Foreign Markets**

Swiss banks are strongly committed to maintaining their position as global leader in cross-border wealth management. In this context, access to foreign markets is of strategic importance to ensure the Swiss financial centre’s ability to remain competitive and to act in the best interests of clients. In order to preserve, and where clients’ interests call for it, to improve market access, political agreements must be reached with the various partner states, also to ensure free movement of capital. In this context, market access into the European Union (EU) is particularly key, given that a substantial proportion of assets under management come from clients domiciled in the EU and the Swiss financial centre presents a major source of capital for the European economy. Regarding the discussion about an institutional framework agreement between the EU and Switzerland, the Swiss banking sector has repeatedly called for improvements and level-playing field conditions. Since the negotiations on the existing draft were abandoned, the focus must be rapidly turned to the safeguarding of the well-established cooperation and existing trade relations between Switzerland and the EU. As the financial services sector was not directly affected by the agreement, the Swiss banking industry’s focus remains on the positive conclusion of specific equivalence processes which are pending in the area of financial services, a fundamental improvement in the current EU equivalence regime, and agreements on sensible and practicable market access solutions with the EU and/or individual European states. The need for this was acknowledged in the Financial Market Strategy published by the Federal Council in December 2020 (area of action “Improve the exportability of financial services”).

**Tax Matters**

Switzerland continues to push ahead with the systematic removal of economically harmful taxes on investment capital:

- In spring 2021, the Federal Council has presented a bill for the complete abolition of withholding tax on domestic interest-bearing securities. If passed, the entire bond market in Switzerland will be free of any withholding taxes.

- In June 2021, the Swiss Parliament also decided on the complete abolition of stamp duty on the issuance of equity. The enactment is still subject to an announced referendum. If the adopted bill passes, the entire primary market for capital in Switzerland will be freed from stamp duties.

- Furthermore, the Swiss Parliament may resume discussions on the abolition of stamp duty on the trading of securities after years of suspension. The removal of stamp duties on the secondary market for capital has been a long-standing priority for the Swiss financial industry.
Another objective of the Swiss financial sector remains the reduction of withholding tax on dividends to the minimum required by double taxation agreements.

Switzerland is preparing thoroughly for the new OECD standard on the taxation of the digitalized economy with a national working group involving all affected businesses and government stakeholders. The objective is to defend Switzerland’s attractiveness as a business place in terms of taxation while reliably and sustainably ensuring international acceptance. The work concentrates on the protection of out-of-scope business sectors and the domestic tax competition, the minimization of tax base differences and the development of internationally accepted mitigation measures. Initial key outputs from the working group, as well as a timeline for implementation, are expected in the first half of 2022, subject to international developments. Thereby, Switzerland acknowledges and responds to the fact that competition between tax jurisdictions will continue in future.

**Framework Conditions for Digitalisation**

Digitalisation is driving the structural realignment in the banking sector. As an important factor for its financial centre’s competitiveness and viewed as an opportunity, Switzerland is committed to an innovation-friendly framework: The Swiss legislature introduced several measures to face the increasing digitalisation of the financial centre in a short period of time. Switzerland also conducts pioneering legislative work by lowering entry barriers for fintech companies to assure increasing competitiveness. The quality of the Swiss financial centre and its competitiveness are to be strengthened and the growth of the economy shall be supported. Therefore, Swiss authorities reacts fast and target-oriented to the developments within the financial industry.

According to the latest fintech study by the ‘Institute of Financial Services’ of the Lucerne University of Applied Sciences and Arts, the number of fintech companies grew from 382 in 2019 to 405 in 2020. Swiss fintech companies are active in a wide range of technology-driven areas like distributed ledger technology (DLT), analytics, robotics, and artificial intelligence. The regulation of digital financial innovation is among the most advanced globally, especially in the field of Digital Assets, DLT and Blockchain. In the Global Fintech Index 2021 Switzerland ranks #5 with two Swiss cities in the global top 100. In August 2019, the Swiss Financial Market Supervisory Authority (FINMA) has issued banking and securities dealers’ licences to two pure-play blockchain service providers for the first time. The two companies will offer services for institutional and professional customers.

**Digital assets, stablecoins and central bank digital currencies (CBDC)**

In September 2020, Parliament passed the distributed ledger technology (DLT) blanket act, which selectively adapted ten existing federal laws. The legislation improves the conditions for blockchain and DLT companies in Switzerland, thereby making the country an international pioneer in modern regulation of innovative financial market technologies. Moreover, the
Federal Council is committed to continuously fighting misuse in order to ensure the integrity and good reputation of Switzerland as a financial centre and business location. In contrast to other jurisdictions, Swiss legislators refrained from drawing up a specific DLT act.

The adopted amendments to the Swiss Code of Obligations, among others, came into force on 1 February 2021. These enabled the introduction of uncertificated securities on a blockchain. No amendments at ordinance level were necessary for those provisions.

One of the key changes which came into force on 1 August 2021 is a license for DLT trading facilities, i.e., financial market infrastructures for DLT securities that can admit other companies and persons to trading in addition to financial intermediaries. DLT trading facilities are permitted to operate a facility for multilateral trading of DLT securities, whose purpose is the simultaneous exchange of bids between several participants, and the conclusion of contracts based on non-discretionary rules which (i) either admits retail customers, (ii) holds DLT securities in central custody based on uniform rules and procedures, or (iii) clears and settles transactions in DLT securities based on uniform rules and procedures. At least one of these three conditions must be satisfied to trigger a licensing requirement as a DLT trading facility. The DLT trading facility must be structured as a legal entity under Swiss law and have its registered office and head office in Switzerland.

Furthermore, legal certainty was increased in insolvency law by explicitly regulating the segregation of crypto based assets in the event of bankruptcy. One of the central pieces of these adjustments consists of the creation of a new category of securities with substantially the same features as certificated securities that allow the digital transfer. The new category of securities will be able to embody so-called asset tokens, e.g., shares or bonds registered on the blockchain.

In summary, key amendments for the financial industry are as follows:

- Civil Law: Increase legal certainty for the transfer of DLT-based assets by means of digital registers (register uncertificated securities)
- Insolvency Law: Clarification of the segregation of crypto-based assets in the event of bankruptcy and access to data rights in the case of insolvency
- Banking Law: Reconciliation of the bank insolvency law provisions with the adjustments in general insolvency law
- Anti-money laundering law: Explicit anchoring of the practice of making decentralized trading platforms subject to the AML Act

The SIX Swiss Digital Exchange (SDX) is still awaiting regulatory approval by the Swiss Financial Market Supervisory Authority (FINMA) to this date. SDX aims for a globally leading market infrastructure to offer a fully integrated end-to-end trading, settlement, and custody service for
tokenised assets. Meanwhile however, Geneva-based Taurus SA, received a securities firm license from FINMA to operate the first independent regulated marketplace for digital assets in the world.

Finally, Switzerland is home of one of the initial Innovation Hubs of the Bank for International Settlements (BISIH). On 3 December 2020 BISIH, the Swiss National Bank (SNB) and SDX published the Helvetia report, a two proofs-of-concepts experiment using “near-live” systems to settle digital assets on a distributed ledger with central bank digital currency (CBDC). The technical and legal feasibility of settling tokenised assets in central bank money was successfully demonstrated.

On 10 June 2021, SNB, the Banque de France and the BISIH announced that they will conduct “Project Jura” an experiment using wholesale CBDC for cross-border settlement. They follow up on a G20-roadmap that has made enhancing cross-border payments a priority.

Fintech licence, sandbox and settlement accounts

Already in July 2017, the Federal Council adopted a new fintech framework with an authorisation-exempt area (regulatory sandbox) and has extended the timeframe for settlement accounts to 60 days. The regulation thereby aims to reduce unnecessary regulatory obstacles for innovative business models.

On 1 January 2019, the Swiss Parliament introduced a new licensing category known as the Fintech licence for companies that operate beyond the core activities characteristic of banks. The requirements for Fintech companies are based on the established auditing of banks and securities dealers, but the audit is less extensive and the reporting process simpler, while focusing on the risks specific to Fintech business models. In March 2020, FINMA granted the first Fintech licence to a Swiss Fintech company. Currently, there are three companies with a Fintech licence.

With effect from 1 April 2019, the Federal Council has also made changes to the provisions relating to the sandbox. The sandbox concept defined in the revised Banking Ordinance allows for public deposits to be accepted without a license up to a limit of CHF 1 million, provided they are not invested and do not bear interest. Depositors must be informed that the sandbox is not subject to FINMA supervision and that the deposits are not covered by the deposit protection scheme. Deposits may be invested and interest-bearing if they are intended to fund a main commercial or industrial activity. Crowdlending activities can be performed within the sandbox.

Data Protection, Privacy and Digital Identity

A legislative proposal regarding a complete revision of the Federal Act on Data Protection (FADP) has been discussed in Parliament since 2018. In fall 2020, Parliament passed the revised Federal Act on Data Protection. To come into force, however, the corresponding implementing provisions in the ordinance to the FADP must be amended. In June 2021, the Federal Council
opened the consultation process which will last until October 2021. The revised FADP and the corresponding ordinance will presumably enter into force simultaneously in the second half of 2022. The revised bill clarifies the handling of personal data and focuses on new technological standards. It considers developments on the European level.

In March 2021, a law concerning the establishment of an officially accepted electronic identity (E-ID) for individuals has been rejected in a popular vote. Following this vote, several parliamentary initiatives have been submitted to swiftly draft a new and improved legal framework for an electronic identity. Currently, four different models are being discussed, one of them being the establishment of a so called self-sovereign identity. A concept shall be published by the Federal Council by the end of 2021. The new legislation is expected for consultation in May 2022.

**Sustainable Finance**

The Swiss financial center is one of the pioneers in sustainable finance and is on its way to becoming a leading international hub for sustainable finance. The term sustainable finance refers to financial services that integrate ESG (Environment, Social and Governance) criteria into business or investment decisions for the benefit of clients and society. Based on various initiatives of the financial industry and with an appropriate political framework, Switzerland can develop into a leading hub for sustainable finance. Sustainable finance is an opportunity for the Swiss financial center.

On 24 June 2020, the Federal Council adopted a report and guidelines on sustainability in the financial sector: The Swiss financial center should further strengthen its position as a leading location for sustainable financial services. The framework conditions are to be designed in such a way that the competitiveness of the Swiss financial center is continuously improved and the financial sector can make an effective contribution to sustainability.

Following the rejection of the CO2 Act by the electorate, politicians are trying to define the way forward in the area of climate protection. Numerous political players are currently trying to address the issue and find ways to implement climate protection efficiently but in a socially acceptable manner. The role of the financial center is also increasingly being addressed (e.g., green and left-wing parties are considering corresponding popular initiatives). The financial industry expressly regrets the rejection of the CO2 Act. It supports immediate measures for the economy as well as a new edition of a lean CO2 law (e.g. without a climate fund). It supports a legal anchoring of the review of climate-related risks analogous to Art. 66, as well as efforts to improve transparency and disclosure in the real economy (e.g. in the real estate sector).

Swiss banks are also contributing to the development of international standards on transparency. These include the G20’s Task Force on Climate-related Financial Disclosure (TCFD) and voluntary participation in climate compatibility tests by the Federal Office for the Environment (FOEN). Numerous banks have already committed to aligning their reporting with TCFD.
An increasing number of banks are aligning their business models with the goals of the Paris Climate Agreement by committing to integrate ESG guidelines such as the UN Principles for Responsible Banking (PRB) into their banking business or by joining the Net-Zero Alliance. At the industry level, the Swiss Bankers Association (SBA) has formed working groups on disclosure and taxonomy. It supports climate risk disclosure under the TCFD and have worked closely with FINMA on revisions to the disclosure circular.

The SBA has developed guidance on integrating ESG considerations into the investment advisory process for retail clients. A majority of banks have expanded their offerings to include financial instruments and financial services that incorporate sustainability preferences. Many banks align their business models with international initiatives to integrate ESG guidelines into the investment business, such as the Principles for Responsible Investing (PRI).

An increasing number of banks are integrating ESG factors into their lending processes on their own initiative. Depending on their business model, numerous banks align their processes with international initiatives for integrating ESG guidelines into the banking business, such as the PRB. The SBA recommends that its members participate in voluntary climate impact assessments and has formed a working group on sustainability in real estate financing.

Various standards for sustainable financial instruments are currently being developed, such as the "EU Green Bond Standard". These are based on the emerging taxonomies and transparency standards in which financial institutions are significantly involved.

Swiss banks and asset managers have developed a wide range of financial instruments geared to sustainability goals (e.g. green bonds, microfinance, sustainability bonds). In addition to the banks' own initiatives, the financial center needs an optimal political framework that gives the Swiss financial center room to develop sustainable finance into an international competitive advantage. In line with the successful Swiss approach, regulatory frameworks should be risk- and principle-based as well as proportional.
United States

The past year of financial regulation in the United States was driven by a new administration, a new Congress, and a continued focus on COVID-19 relief. Throughout the campaign and in the early days of taking office, President Biden and his financial regulators made clear that there would be an emphasis on addressing climate risk, increasing diversity and inclusion efforts, rolling back some of the regulatory changes made in the previous administration, and pushing through its “Build Back Better” infrastructure package. As of the date of writing, much of the infrastructure package remained in limbo in Congress, but the first few months of the administration’s agenda were already in place, as explained below.

Cryptocurrency

On August 10, the Senate passed the bipartisan Infrastructure Investment and Jobs Act (IIJA), which introduces new reporting requirements for cryptocurrency transactions. The provision requires all cryptocurrency brokers, including miners, hardware manufacturers, and software developers, to report information on crypto transactions, such as price points and customer information, to the Internal Revenue Service (IRS). The House must vote on the Senate version of the bill, but progressive House Democrats are pushing for passage of the $3.5 trillion social spending bill before a vote on the IIJA. Speaker of the House Nancy Pelosi sent a letter to House Democrats pushing back the deadline to pass the bipartisan infrastructure package from September 27 to October 31.

In addition to the tax provision in the IIJA, Securities and Exchange Commission Chair Gary Gensler has made it clear that his agency is looking into new regulations on the sale of crypto tokens, crypto trading platforms, stablecoins, investment vehicles with exposure to crypto assets, and custody of crypto assets. The Treasury Department is also exploring ways to regulate stablecoins, including reserve mandates to ensure liquidity, regulations surrounding the creation of new stablecoins, and security provisions.

CBDC

The United States is in the early phases of exploring the introduction of a central bank digital currency (CBDC), or “digital dollar.” The Boston Federal Reserve Bank formed a partnership with MIT’s Digital Currency Initiative in 2020 and research is still in its formative stages. The Fed released a paper in February 2021 detailing the “preconditions” necessary before creating a CBDC. These conditions include: clear policy objectives for a CBDC; stakeholder support from government bodies, end users, financial institutions, and technology and infrastructure providers; a strong legal framework that provides a clear legal authority, upholds privacy, and addresses fraudulent behavior; robust technology; and market readiness with sufficient supply and demand. Top Federal Reserve officials are still divided on the matter and continue to weigh the risks and benefits. The Fed is expected to release a report that outlines its research on
potentially adopting a digital dollar, on which it will solicit public comment, but a firm policy decision is unlikely in the near future.

Climate Finance

In March 2021, the SEC created a Climate and ESG Task Force housed in the SEC’s Division of Enforcement. The primary goal of the task force is to identify misconduct related to companies’ environmental, social, and governance (ESG) statements. The main actions of the task force are to review the disclosures of public companies, investment advisors, and funds for any misleading statements related to ESG, as well as review continuity plans for systemically important companies. In March, the SEC asked the investment community for comments on the SEC’s current climate change disclosure rules and received over 550 responses, many of which were in favor of mandatory climate disclosure requirements. A month after the Task Force was created, the SEC issued a “risk alert” outlining concerns regarding companies’ issuing of misleading statements related to their ESG practices.

In May 2021, President Biden signed an executive order addressing climate-related financial risks. As part of the order, Treasury Secretary Janet Yellen must deliver a report on financial risk data related to climate change. The Financial Stability Oversight Council (FSOC), which Yellen chairs, is expected to deliver this report by late fall 2021, outlining how they will consider climate change in their regulations and supervisory role moving forward.

At the start of July 2021, the Financial Stability Board (FSB) released a roadmap for coordinating with the international community on regulations regarding climate-related financial risks. The roadmap included a discussion of disclosure requirements, using frameworks based on the standards of the Task Force on Climate-Related Financial Disclosures and the IFRS. Once the framework is endorsed by the International Organization of Securities Commissions, local regulators could then decide on how to implement these standards. The FSB also revealed that further regulatory changes would occur in 2022 as it decides how best to fight varying climate-related vulnerabilities.

At the end of July 2021, SEC Chair Gensler announced that he has directed his agency to come up with a new mandatory climate risk disclosure requirement proposal to be ready for consideration by the end of 2021. Along with the directive, Gensler offered guidance in the creation of new rules, including his preference for mandatory disclosures; consideration of disclosures in 10-K form; consideration of qualitative disclosures that outline a company’s climate strategies; consideration of quantitative disclosures such as greenhouse gas emissions, financial impacts of climate, and progress towards climate goals; industry-specific disclosure requirements; consideration of regulations surrounding accurate marketing, company statements, and naming of funds related to ESG; and the use of the Task Force on Climate-Related Financial Disclosures (TCFD) framework as a guide.

The New York Department of Financial Services (NYDFS) also announced that banks and credit unions regulated by New York are eligible to earn credit via the state’s Community
Reinvestment Act (CRA) if they make loans that assist with climate adaption, resiliency, and mitigation in low-to-moderate income communities.

On October 15, 2021, the White House released a plan to calculate, reveal, and address the risks that climate change poses to the nation’s financial system. President Biden called upon FSOC, the Treasury, and SEC to execute this plan.

**Diversity**

In December 2020, Nasdaq submitted a proposal to the SEC outlining board diversity requirements for all companies listed on its stock exchange. The proposed rule would require companies to include at least one woman and at least one “diverse” director (i.e. a director who self-identifies as an underrepresented minority or LGBTQ+) on their board, and report boardroom diversity data publicly within one year of SEC rule approval. Firms that don’t comply with the rule will face de-listing if they aren’t able to explain their non-compliance. In February 2021, Nasdaq clarified its rule proposal to allow for smaller companies (defined as companies with five directors or less) to be compliant if they have one “diverse” director rather than two. The amended rule provides Smaller Reporting Companies and Foreign Issuers a wider variety of board-demographic options to be considered compliant and allows companies listed on the Nasdaq after the initial proposal phase-in period two years to comply. Companies that fall out of compliance due to a seat vacancy have one year to regain compliance. On August 6, 2021, the SEC approved Nasdaq’s proposal.

**Antitrust**

On July 9, 2021, President Biden issued an executive order that addresses antitrust in a variety of markets, including the banking and consumer finance markets. The order encourages the Department of Justice and other agencies that oversee banking, such as the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC), to increase scrutiny of bank mergers by updating bank merger guidelines from the Bank Merger Act and the Bank Holding Company Act of 1956. The order asks bank oversight agencies to propose a plan for increased merger scrutiny by January 5, 2022.

It also encourages the Consumer Financial Protection Bureau (CFPB) to create new rules that allow customers to download their personal banking data and take it with them to a competitor, if desired. This would make it easier for customers to move their financial data, such as transaction history, automatic bill payments, direct deposits, to other banks, credit unions, community banks, or financial technology companies. While the CFPB is likely to focus more on these open banking rules under the Biden administration, it could still take years for new rules to be enacted.
Repeal of Trump administration rules

In January 2020, the Trump administration limited the CFPB’s authority to fine firms that committed “unfair, deceptive, or abusive acts or practices” under the 2010 Dodd-Frank Act. The Trump-era policy limited punishments to firms that “lacked a good-faith effort to comply with the law,” and whose actions had a net cost rather than a net benefit. In March 2021, the Biden administration rescinded this policy and re-established the CFPB’s full capacity to enforce this Dodd-Frank provision against abusive practices. Under the 2010 Act, an abusive practice is defined as one that interferes with someone’s ability to understand a product or service, exploits someone’s lack of understanding, takes unreasonable advantage of someone who is unable to protect themselves, or takes unreasonable advantage of someone who reasonably relies on a company to act in their interests.

The OCC under the Trump administration made changes to the Community Reinvestment Act (CRA) rule that ensures banks are serving minorities and underserved groups. The original rule requires these banks to pass an exam that showcases the extent to which they are making loans in the communities surrounding their branches. The Trump administration revised the regulation to allow banks to use “credits” given to them for certain activities, such as issuing credit cards or making loans to improve hospitals or sports stadiums and put more emphasis on dollars invested rather than activity volume. On September 8, 2021, the OCC issued a proposal to rescind the May 2020 rule and replace it with rules adopted jointly by the Federal banking agencies in 1995, as amended. The OCC further stated that it is committed to working with the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) to put forward a joint rulemaking that strengthens and modernizes the CRA.

On June 30, 2021, President Biden repealed the October 2020 OCC True Lender Rule. The rule focused on partnerships between national banks and non-bank lenders, adjusting whether state or federal interest rate laws applied to loans depends on which institution is the “true lender.” The True Lender Rule states that the national bank would be the “true lender” if it is named as the lender in the loan agreement or funds the loan. Congress used the Congressional Review Act to rescind this rule, reverting the rules governing this partnership situation to the amalgamation of judicial decisions in place prior to it.

Covid-19 relief

On June 30, 2021 the Federal Reserve lifted restrictions imposed during the COVID-19 pandemic on bank dividends and share buybacks, for banks that passed the Federal Reserve stress test. For banks that failed the stress test by falling below its minimum risk-based requirements, the buyback and dividend restrictions stayed in place through September 30. The central bank imposed stricter limits on firms that still did not have the capital reserves required after September 30.
In May 2020, banking regulatory agencies issued a new rule that banks should exclude on-balance sheet amounts of U.S. Treasury securities and deposits at Federal Reserve Banks from the supplementary leverage ratio (SLR). The temporary rule, enacted due to COVID-19, expired as scheduled on March 31, 2021.

**SPACs**

In April 2021, the SEC released new guidance for special-purpose acquisition companies (SPACs). The guidance centered around warrants, which allow early investors in SPACs to buy shares in the future. The new guidance stated that warrants should be categorized as liabilities instead of equities, as they were previously classed by many investors. Based on this guidance, warrants would have to be valued every quarter and require a more complex calculation than a simple equity would. If the guidance becomes an official rule, current SPACs and deals in the pipeline would be required to re-calculate financial statements, according to the new warrant calculations.

In August 2021, an SEC advisory committee released a set of guidelines for how it believes the SEC should regulate SPACs more thoroughly. The guidelines list eight recommendations, including disclosure of: the SPAC sponsor’s role; the “mechanics and timeline of the SPAC process;” the search for a target company; risks in finding a target company; additional funding terms; the evaluation process of potential target companies, and diligence commitments from the sponsor regarding the target company. The guidelines also call for clearer language around the “economics of various participants in a SPAC process.” SEC Chair Gensler agrees that increased SPAC regulation is necessary. The agency is expected to present rule proposals regarding SPACs next year.

**BSA/AML/Beneficial Ownership**

On January 1, 2021, Congress overrode a presidential veto to pass the National Defense Authorization Act, which includes comprehensive changes to the Bank Secrecy Act (BSA) and anti-money laundering laws (AML). The new law, the Anti-Money Laundering Act of 2021 (AMLA) requires, among other things, that certain companies report beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN) – a beneficial owner is defined as anyone who owns 25% equity or has “substantial control over the entity.” The AMLA also creates a whistleblower program, increases penalties for BSA/AML violations, and directs the Treasury Department to consider ways to streamline SAR and CTR requirements, while creating a pilot program to allow institutions to share SAR information with foreign branches and affiliates.

In June 2021, the Federal Financial Institutions Examination Council (FFIEC) announced updates to the BSA/AML Manual. The updates include new guidance for the following manual sections: International Transportation of Currency or Monetary Instruments Reporting, Purchase and Sale of Monetary Instruments Recordkeeping, Reports of Foreign Financial, and Special Measures. The FFIEC stated that the new guidance “should not be interpreted as new
instructions or increased focus on certain areas; instead, they offer further transparency into the examination process and support risk-focused examination work.”